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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 119

JAMES IVEY WYATT, PETITIONER,

vs.

UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 14, 1940

CERTIORARI GRANTED JUNE 24, 1940

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

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[fol. 1]

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA

CAPTION

Be It Remembered that a regular term of the United States District Court, in and for the Southern Division of the Middle District of Alabama, the Honorable Frank M. Johnson, Jr., United States District Judge for the Middle District of Alabama, presiding, was held at Dothan, Alabama, said term beginning on the 26th day of May, 1958, and there came on to be heard and determined, among other causes pending on the docket, while Court was regularly in session, the following cause:

Criminal Case No. 1823—Southern Division

UNITED STATES OF AMERICA

versus

JAMES IVEY WYATT

[fol. 2] IN THE UNITED STATES DISTRICT COURT

INDICTMENT—Filed February 19, 1958

The Grand Jury charges:

Count One

On or about December 12, 1957, James Ivey Wyatt did knowingly transport in interstate commerce from Columbus, Georgia to Dothan, in the Middle District of Alabama, a woman, to wit, Mary Kathleen Byrd for immoral purposes, to wit, for the purposes of prostitution, debauchery, and unlawful sexual intercourse.

Count Two

On or about —, — did knowingly transport in interstate commerce from — to —, a woman, to wit, — —

for immoral purposes of prostitution, debauchery, and unlawful sexual intercourse.

A True Bill:

/s/ Robert E. Varner, Assistant United States Attorney.

/s/ Edward H. Edwards, Foreman of the Grand Jury.

[fol. 3] IN THE UNITED STATES DSITRICT COURT

Transcript of Trial Proceedings—Filed July 14, 1958

Before: Hon. Frank M. Johnson, Jr., Judge, and a jury, at Dothan, Alabama, May 26, 1958.

APPEARANCES:

For the United States: Hartwell Davis, U. S. Attorney, Robert E. Varner, Asst. U. S. Attorney, Ralph M. Daughtry, Asst. U. S. Attorney.

For the Defendant: Hubert Farmer, and Leslie E. Seigle.

(The above stated cause coming on for trial at Dothan, Alabama, on May 26, 1958, before Hon. Frank M. Johnson, Jr., Judge, jurors having been generally qualified and sworn, the jurors were qualified as to this case, a jury was selected for this case, all witnesses were sworn and sequestered, and the following proceedings were had:)

The Court: All right, gentlemen, are you ready to go to the jury?

Mr. Davis: Yes, sir.

(At which time Mr. Varner made an opening statement to the jury on behalf of the United States)

(At which time Mr. Farmer made an opening statement to the jury on behalf of the defendant)

[fol. 4] The Court: All right, who is your first witness?

Mr. Davis: Leroy Mills.

LEROY MILLS, witness for the United States, having been duly sworn, testified as follows:

Direct examination.

By Mr. Davis:

Q. What is your name?
A. Leroy Mills.
Q. Where do you live?
A. Dothan, 807 North Alice Street, City.
Q. Where—how long have you lived in Dothan?
A. Since 1932.
Q. Leroy, what is your occupation?
A. Bellboy at Martin Hotel.
Q. Speak just a little louder, please.
A. Bellboy at the Hotel Martin.
Q. And where—is that located here in Dothan?
A. Yes, sir; East Main Street.
Q. Were you in that position last December?
A. Yes, sir.
Q. All during the month of last December—of December of last year?
[fol. 5] A. Not all during the month last December; I was away during the Christmas holidays.
Q. I mean——
A. I was——
Q. —you were still the bellhop there?
A. Yes, sir; yes, sir.
Q. You just were on a little vacation?
A. Yes, sir.
Q. How long have you been a bellhop at the Hotel Martin?
A. Since 1933, all that time I was serving.
Q. Do you know the defendant in this case, James Ivey Wyatt?
A. Well; I seen him; yes, sir.
Q. Do you see him here now?
A. Yes, sir.
Q. Will you point him out to the jury?
A. (Pointed)
Q. Leroy, did you see him in December of this year?
A. Of last year I did, sir.

Q. I meant December of last year?
A. Yes, sir; I did.
Q. What?
A. Yes, sir; last.
Q. Where?
A. At the Martin Hotel.
[fol. 6] Q. And do you recall the date on which you saw him?
A. It was December 13.

Mr. Farmer: If your honor please, I want to register an objection, and if I am out of order—in the line of questioning, or the District Attorney is taking, way I see it, the cart before the horse; I wish to object to the line of questioning, and the witness—questioning to the witness, as to what he expects to bring out in the City of Dothan without proving any transportation.
The Court: Overrule.
Mr. Farmer: All right, sir.

Q. Did you—will you answer that last question?
A. The last question?
Q. Yes.
A. That you asked? Did I see him December?
Q. Yes?
A. And what day?
Q. Yes?
A. It was December 13.
Q. And what time of day was it when you first saw the defendant?
A. It was about nine thirty.
[fol. 7] Q. Where did you—nine thirty in the morning or night?
A. The morning.
Q. And who—where did you see him?
A. In Room 110.
Q. Was anyone with him or with you when you saw him?
A. No, sir; I was standing—because the lady, she were in bed.
Q. There was a woman in bed in the room?
A. Yes, sir; there was somebody in bed.
Q. And did you see her?
A. She was covered up at that time, I didn't; no, sir; when I first go into the room.

Q. What did the defendant say to you, and what was the purpose of your going to the room?

A. I had a call there, clerk told me to answer a call there.

Q. All right, you went to the room, did the defendant state——

Mr. Farmer: We object to it, that he had a call there, it is hearsay, and where it came from or who it was; we object to it, move to exclude any answer to——

The Court: I will sustain that.

Q. Did you go to the room——

The Court: Just a minute, Mr. District Attorney. The [fol. 8] answer that the witness gave to the question as to what the clerk of the hotel said on the motion of defendant's counsel is excluded, and you jurors will not consider it.

Q. Did you go to his room?

A. Yes, sir; I did.

Q. And what did he say to you when you got to the room?

A. He asked me to get him a pint of whiskey.

Q. What did you reply?

A. I said, "I am sorry, the store is not open."

Mr. Farmer: We object to what the witness replied to that, if your honor please.

The Court: Was this statement made to and in conversation with the defendant?

Witness: Yes, sir.

The Court: Overrrule.

Q. Tell us what you replied.

A. I said, "I am sorry, the store is not open, and won't be open until ten thirty, and then I come back and get it for you."

Q. What did he say?

A. He said, "Okey."

[fol. 9] Q. Did he say anything else at that time?

A. Not at that time.

Q. What?

A. Not at that time he didn't.

Q. All right. When did you next see him?

A. I seen him about eleven o-clock.

Q. All right. What was the—where did you see him that time?

A. In Room 110.

Q. Did——what did he say to you on that occasion?

A. He asked me to get the whiskey.

Q. What did you say?

A. I would get it for him, sir.

Q. What did he say?

A. Well, he give me the money, and I go and got the whiskey, sir.

Q. You did?

A. Yes, sir.

Q. Did you bring it——did you bring him the whiskey?

A. Yes, sir; I brought him the whiskey.

Q. What did he say?

A. Well, he thanked me at that time.

Q. And what—was there any other conversation between you?

A. Not at that time; no, sir.

[fol. 10] Q. All right. Now, did you see anyone else in the room when he asked for the whiskey?

A. Yes, sir; I seen the lady on this trip.

Q. Have you seen her here today?

A. Yes, sir; I have seen her here today.

Mr. Davis: Ask—just a minute, let me—Mary Kathleen Byrd to come to the door, please.

Q. You turn and look at this woman; don't say anything.

(A woman entered the court room)

The Court: There is far enough. All right.

A. Yes, sir.

Mr. Davis: Step out.

(The woman left the court room)

Q. You see the—Mary Kathleen Byrd that came to the door there?

A. Yes, sir.

Q. Who was the woman that was in the room with the defendant James Ivey Wyatt?

A. That was the lady what was with him.

Q. All right. Now, she was—you saw her with him at

the eleven o'clock visit when you went and got the order for whiskey, and then brought whiskey back there?

[fol. 11] A. Yes, sir.

Q. Then when—when did you next see the defendant?

A. He called for Cokes a few minutes later.

Q. All right.

A. Two Coca Colas.

Q. Did you carry them?

A. Yes, sir; I carried the Coca Colas.

Q. What happened then?

A. Well, then at the time he asked me——

Q. Who?

A. Mr. Wyatt.

Q. All right?

A. He asked me about business.

Q. Asked you—just what did he say?

A. He said, "Boy, how is business?"

Q. All right. What did you say?

A. I said, "Business?" He said, "Yes"; then I asked——

Q. You say—yes what?

A. He asked—he said, "How is business?"

Q. Yes?

A. And I said, "What kind of business?" And then he said that, "We are working, and if you get anything, to let us know."

Q. All right, and did—did the woman say anything in his presence at that time or not?

A. Yes, she says——

[fol. 12] Q. Speak out loud?

A. She says, "You haven't had any business?" I said, "Yes'm, I had two this morning, but I have turned them down."

Q. All right, what did she say then?

A. Not anything else at that time.

Q. All right.

Mr. Farmer: Now, if your honor please, at this point I wish to exclude the answer of the witness as to—about "Business" and "We are ready for business and want to do business."

The Court: Was the statement that the woman whom

you have identified as Mary Kathleen Byrd made in the presence of this defendant; was he there, too?

Witness: Oh, yes, sir; he was there.

The Court: Overrule.

Q. Now, did this defendant then say anything else?

A. Not at that time; I left the room then.

Q. All right. Was that before or after you got the Cokes?

A. This was on the trip with the Cokes, this time.

Q. I meant, you went up there, did you take the Cokes to him at that time?

A. Yes, sir.

[fol. 13] Q. All right. Now, did you go back to that room any more?

A. Yes, sir; I did.

Q. All right. Who was present on this next occasion?

A. The defendant and Mrs. *Watts*.

Q. All right: Now, did the defendant or did the woman first say anything to you on the next visit, which one?

A. Well, Mr. *Watts* said, "We are going out for awhile," and she said, "You haven't had any business yet?" and I says, "No."

Q. What?

A. Mr. *Watts* said, "We are going out for awhile."

Q. And you say—Mr. Wyatt, you mean this defendant?

A. Yes, sir; the defendant.

Q. All right?

A. And said, "We are going out for awhile, and if you have any business to be sure to hold it for us; we will be back after a little while."

Q. All right. Did the woman say anything then?

A. No, sir; she didn't say anything at that time on that particular trip.

Q. All right, did—was anything said about the division of money?

A. We haven't got to that yet.

Q. All right, was that on this occasion?

A. No, sir; that wasn't on this occasion.

[fol. 14] Q. All right, did you go—did you later go back to that room?

A. I go back and carried Cokes again.

Q. What?

A. I go back to take Cokes again.

Q. All right, and what—who said what on that occasion, and who was present?

A. Who was present?

A. The defendant and Mrs. *Watts.*

Q. Mrs. Wyatts, is that what you are calling "Watts"?

A. Mrs. *Watts.*

Q. W-y-a-t-t is the way you spelled her——

A. Well——

Q. Is that the same one came to the door and this same man sitting next to Mr. Farmer?

A. Yes, sir; they was them.

Q. All right. Now, you three were present?

A. We three were present.

Q. What was said and by whom on that occasion?

A. Well, now, let's see, he said on this time, he asked me how was the night boy at—was he all right. I said, "No, this boy is young, and just don't fool with him, the old boy will be back tonight." He said, "Well, you know a man when you see him," he said, "We will split fair with you, and better than that, we will split——"

[fol. 15] Q. I didn't catch that last.

A. "We will split fair with you," divide the money equal or fair, you know, that was what he meant; I understood what he meant.

Q. Did he tell you how it was divided with you?

A. Forty sixty.

Q. Is that sixty to you or forty to you?

A. It is forty to me and sixty to him.

Q. I see. All right. And——

A. And then he says, "If business increases, we will do better, we will split fifty fifty."

Q. All right. And you—then—that also occurred about the night boy—now, let's see—now, did—did you revisit that room any more?

A. Yes, sir; late in the afternoon I did.

Q. What did you take there, or did you take anything there on that occasion?

A. No, sir; on that occasion I just went there, I had gone over to quieten them down, they had gone out and come back in, and which they were causing a lot of disturbance, cursing among each other and what not, I go down and told them they would have to be quiet.

Q. I see. Now, did the woman say anything on that occasion?

A. No, sir; she didn't say anything on that occasion.

Q. Well, was there any complaint made by anyone about [fol. 16] business?

A. About business?

Q. Yes?

A. Not at that time, that is late in the afternoon, that was getting late in the afternoon.

Q. You mean it was later on?

A. Yes, sir; this was late.

Q. All right, tell—did you go back again?

A. Again after that; yes, sir; I made the second trip to quiet them down.

Q. All right, then what was said?

A. Not anything, they just said they would be quiet, closed the door.

Q. All right. Did the woman that you referred to—the red-haired woman that came to the door—as Mrs. Wyatt, on any of the occcasions, any of your visits, did she complain about the lack of business?

Mr. Farmer: If your honor please, that is a leading question.

The Court: I sustain objection.

Q. To refresh your recollection, was—if that does refresh your recollection, did she complain about the lack of business?

A. Oh, yes, sir.

[fol. 17] Mr. Farmer: We object.

The Court: Just a minute. I sustain that objection, unless the defendant was present at the time.

Q. Was it said with the defendant being present?

A. Yes, she did; he was there at all times.

Q. All right. She complained of what——

A. He was there at all times, and I didn't go to the room——

Q. Did she make such a complaint?

A. Yes, sir.

Mr. Farmer: We object, if your honor please, that is a leading conclusion; it is a question of what the Wyatts said, if anything.

The Court: I sustain objection.

Q. What did she say?

A. What did she say?

Q. Yes?

A. She said, "How about the business, there ain't no business"; I said, "No, it is just slow today."

Q. All right. Did you see—did you go back to that room any more after the second visit to quiet them down?

[fol. 18] A. After the second visit?

Q. That's right, to quiet them down, did you go back to that room any further that day?

A. No, sir; only time I go back, now, this is late in the afternoon, I think we have gone through it all; I only made about six trips to the room, I only made about six trips to the room, and this was late in the afternoon, around six thirty, I would say six thirty or quarter to seven they left the hotel, they both left the hotel to go to the next little cafe, Jay's Cafe, and had lunch, I didn't see them again after that.

Q. All right. Well, then, yet—you say you have been a bellboy since '32 or '33?

A. 1933.

Q. Since 1933—what is the meaning of the talk that you were doing there; you are an expert on that subject, are you?

A. Sir?

Q. Are you an expert on the subject of the talk that was going on between you and Wyatt and Mrs. Wyatt?

Mr. Farmer: We object.

The Court: I sustain it; I sustain objection.

Mr. Davis: That is all; you can have the witness.

[fol. 19] The Court: Cross examination.

Mr. Farmer: We first want to move to exclude the testimony of this witness, if your honor please.

The Court: All right. You want to recite any ground?

Mr. Farmer: On the ground that what he said is too vague and indefinite to be material to the issues of this case.

The Court: Overrule your motion. Cross examination.

Mr. Farmer: All right.

Cross-examination.

By Mr. Farmer:

Q. Leroy, what is your last name?
A. Mills, Leroy Mills.
Q. How you spell that last name?
A. M-I-L-L-S, Mills.
Q. Mills?
A. Yes.
Q. Leroy Mills?
A. Yes, sir.
Q. Now, when was it you say you first saw the defendant?
[fol. 20] A. Around nine o'clock, December 13.
Q. Nine o'clock in the morning or night?
A. In the morning; in the morning.
Q. In the morning?
A. Yes, sir.
Q. And that was on what day of the week?
A. I wouldn't know just what day of the week it was.
Q. You don't know what day of the week it was; you know it was on the 13th, do you?
A. Yes, sir; it was on the 13th.
Q. Who have you talked to about this case, your testimony and what you would testify in this case?
A. Sir?
Q. With whom have you talked about what your testimony would be in this case?
A. I haven't talked to anybody about what my testimony would be in the case; no, sir.
Q. Have you talked with anybody as to what you would testify and what you knew in the case?
A. What I knew in the case?
Q. Yeah?
A. Yes, sir; I did.
Q. With whom have you talked?
A. Well, I talked to Mr. Lill, he came and asked me about it.
[fol. 21] Q. Mr. who?
A. Mr. Lill.
Q. Mr. John Lill; all right, anybody else?
A. I think that is all.

Q. Any police officer from the City of Dothan?
A. No, sir.
Q. No police officers?
A. No, sir.
Q. Now, this was on the 13th day of December, you say?
A. Yes, sir.
Q. And you don't know what day of the week it was——

Mr. Farmer: We don't insist on that answer.

A. No, sir; I won't dare to say what day of the week it was.
Q. Now, how many trips you say you made to that room?
A. Sir?
Q. How many trips you say you made to the room?
A. I say I made half a dozen trips.
Q. You made half a dozen trips, and the first one was when, about what time—nine o'clock I believe you said?
A. About nine o'clock in the morning.
Q. When was the next one?
A. It was around eleven o'clock.
Q. About eleven; when was the next one?
A. It was about ten, fifteen minutes after eleven.
[fol. 22] Q. Ten or fifteen minutes after eleven?
A. Yes, sir.
Q. When was the next one?
A. About quarter to twelve.
Q. About a quarter to twelve?
A. Yes, sir.
Q. And when was the next one?
A. The next one, I say about one o'clock.
Q. When was the next one?
A. Around two thirty or three.
Q. When was the next one?
A. Well, let's see how many we got.
Q. Now——
A. Excuse me. The next trip, then, I made to the room, was about five or five thirty in the afternoon.
Q. When was the next one?
A. Around six thirty.
Q. All right, when was the next one?
A. No more trips.

Mr. Farmer: Come down.
The Court: Next witness.

Mr. Davis: We will take Charlie Griffin.
[fol. 23] The Court: Have you been sworn?
Witness Charlie Griffin: Yes, sir.
The Court: All right, have a seat there; you lawyers show your witnesses where the seats are.
Mr. Varner: Yes, sir; thank you.

CHARLIE GRIFFIN, witness for the United States, having been duly sworn, testified as follows:

Direct examination.

By Mr. Varner:

Q. Your name is Charlie Griffin?
A. Yes, sir.
Q. Back about the middle of December of 1957 you were bellboy at the Houston Hotel, were you not?
A. Yes, sir.
Q. Do you know the defendant by sight, James Ivey Wyatt?
A. No, sir.
Q. You know him when you see him?
A. No, sir.
Q. Do you know the lady who has been identified to you as, or a lady who has been identified to you as Mrs. Mary [fol. 24] Kathleen Byrd?
A. Yes, sir.

Mr. Varner: Will you ask Mrs. Byrd to step into the court room, please.

(Woman who entered court room during testimony of Leroy Mills again entered the court room.)

Mr. Varner: I want you to look at this witness.
Mr. Davis: Don't say anything.
Mr. Varner: Thank you, ma'm; you may step back out.

(Woman left the court room.)

Q. Do you know that lady?
A. Yes, sir.
Q. Is she the lady you know as Mary Kathleen Byrd?

A. Yes, sir.
Q. Did you see her on or about December 13, 1957?
A. Yes, sir.
Q. Where?
A. In the hotel.
Q. What hotel?
A. Houston Hotel.
Q. Here in Dothan?
[fol. 25] A. Houston Hotel, City.
Q. Where in the hotel did you see her?
A. She was a resident there in a room, Room number 318.
Q. And did you go to that room and see her in the room?
A. Yes, sir.
Q. At about what time was that?
A. I went early part of the night; it was approximately, I imagine, nine or nine thirty.
Q. What was the occasion for you going to the room?
A. I was called to deliver some food.

Mr. Farmer: We object, we object, we move to exclude the answer.

The Court: I sustain it; the statement that he was called to deliver some food is not admissible at this time.

Q. What did you do as you went to the room?
A. Carried food.
Q. And was anybody else in the room besides you and Mrs. Byrd?
A. No, sir.
Q. Did you at that time have a conversation with Mrs. Byrd?
A. Yes, sir; a few words, words was said.
Q. Did—well, what did she say?

Mr. Farmer: We object, if your honor please.

[fol. 26] Mr. Varner: Your honor, we contend this is part of the res gestae, that it is admissible on that basis, the same day——

The Court: Well, I am going to sustain objection for the time being.

Mr. Varner: Is there something else that the court doesn't mind telling me?

The Court: Yes, I am going to require you to prove your transportation, prove all the other elements of your offense before I let this testimony in, if I do then.

Mr. Davis: Come down.
Mr. Varner: Come down.
The Court: All right. You want to examine the witness up to this point?
Mr. Farmer: No, sir.
Mr. Varner: We expect to call him back.
The Court: Who is your next witness?
[fol. 27]. Mr. Davis: All right, sir, we will ask Mr. John W. — we will ask Mr. H. W. Hilson to take the stand.

Henry W. Hilson, witness for the United States, having been duly sworn, testified as follows:

Direct examination.

By Mr. Davis:

Q. What is your name?
A. Henry W. Hilson, sir.
Q. Mr. Hilson, what is your position?
A. I am detective for the City of Dothan, sir.
Q. How long?
A. In this capacity four years; nine years with the Department, sir.
Q. Do you know—do you know the defendant James Ivey Wyatt?
A. Yes, sir.
Q. Did you arrest him on December 13, 1957?
A. I did, sir.
Q. What did you arrest him for?
A. Section ten, twenty ten three, City Code, sir, failing to register as a——

Mr. Farmer: We object, if your honor please.
[fol. 28] The Court: I sustain it.
Q. All right, did you have a warrant for his arrest and did arrest him?
A. No, sir; no warrant, sir.
Q. No warrant; you arrested him without a warrant?
A. Yes, sir.
Q. Did arrest him?
A. Yes, sir.
Q. Was that for violationg—alleged violation of some——

Mr. Farmer: We object, if your honor please.

The Court: Sustain it. It will be excluded; we are not interested in what he arrested him for or what he charged him with.

Q. Did you—incident to arrest, did you search him?

A. I did, sir.

Q. Did you find or did you not find any bus tickets on his person?

A. I did, sir.

Q. Where were they from?

A. They were from Columbus, Georgia, sir, to Dothan, Alabama.

Q. Do you have them there?

A. I do, sir.

[fol. 29] Q. All right, sir, let me see them, please. These two tickets, being Southeastern—let me get this identified first.

Mr. Davis: Mark these Government's Exhibits numbers 1 and 2, and we will mark that one Government's Exhibit number 1, that's right, and this one number 2, don't write across that dating, please, sir. Would you like to look at this, Mr. Farmer——

Mr. Farmer: Yes, sir.

Mr. Davis: —before I proceed any further?

Q. These two stubs are numbered two—two two three six six five and two two three six six six, and marked Government's Exhibit number 1 and Government's Exhibit number 2, respectively, for identification; you found them in his clothes when you searched——

A. They was in his pocket book.

Q. In his pocket book?

A. Yes, sir.

Q. And were they—has anything been added to these things except your—except that—I can't make that out, twelve fourteen——

A. Twelve fourteen fifty-seven.

Q. Twelve fourteen fifty-seven?

A. Yes, sir.

[fol. 30] Q. Did you put that on there?

A. Yes, sir.

Q. And that initial, "H", is that your initial?

A. Yes, sir; it is, sir.
Q. For the purpose of identification?
A. It is, sir.
Q. All right.

Mr. Davis: And we offer these two stubs, being Southeastern Greyhound Lines stubs, identification check, and to Dothan Alabama, says, "Station shown on back, Columbus, Georgia," Columbus is stamped on there, and we—December 12, 1957, showing on stub number two two—two two three six six six, and just December 12 on the other one.

Mr. Farmer: The defendant objects separately and severally to the two.

The Court: May I see them?

Mr. Farmer: Yes, sir—to the two stubs, or whatever they are.

The Court: All right. I will sustain objection for the time being.

Mr. Davis: All right, sir.

[fol. 31] Q. Now—all right, now who was present when you were searching the defendant?

A. I don't recall, sir, I believe possibly maybe Chief Deal was there, sir, I don't recall who was in the office there. The jailer was probably in there, sir.
Q. And did you talk to the defendant?
A. Yes, sir.
Q. Did you offer him any threats or promises to get him to make a statement, or did anyone offer him any threats or promises in your presence or that you know of to get him to make any statement?
A. No, sir.
Q. Did he make a statement; just answer did he?
A. Yes, sir.
Q. All right. What did he say?

Mr. Farmer: Now, if your honor please, I want to object and state my ground of objection. Apparently and evidently the government now offers to—some kind of testimony, confession as to transportation that I take it is in line with the stubs that have been offered, I can't tell until we get into it, but I think that is the trend of what it was; if that is so, on that idea, any confession as to transportation or being a material part of the corpus delicti,

it would not be admissible as I understand the law, I can be wrong, but as I understand the law, until the corpus [fol. 32] delicti, itself, has been proved by the Government. That is the—there are—of course reached decision in this on the question, one of the Fifth Circuit Court of Appeals, rather recent, Vogt versus United States, came from Texas, 156 Federal Second, and the old case, *Bryan* versus United States, came from the United States Supreme Court, that the confession is not admissible until the corpus delicti has been proven, and we submit that there has been no corpus delicti proved up to this point, that the questioning now taking place by this witness——

The Court: Objection is overruled; let's get along.

Q. All right, now, what statement did he make?

Mr. Farmer: Now, if your honor please, just on the question of proving, do we—I don't believe we have to take an exception, do we here on this?

The Court: No.

A. He stated to me, sir, that he had purchased these tickets in Columbus, Georgia, and was going to Laguna Beach to see Mrs. Byrd's mother, and he was just stopped over in Dothan.

Q. Did he tell you who rode from Columbus, Georgia, to Dothan, Alabama, on those tickets that he said he had purchased in Columbus, Georgia?

[fol. 33] A. He said he and Mrs. Byrd accompanied him to Dothan.

Q. And Mrs. Byrd?

A. Yes, sir.

Q. Did you see Mrs. Byrd?

A. Yes, sir.

Q. You didn't at that time, but since that time have you had her identified to you by him any time?

A. No, sir; he hasn't identified her to me.

Q. Now, was she or was she not—were you on duty at the time later that night?

A. Yes, sir.

Q. Was Mrs. Byrd arrested that night or not?

A. She was.

Q. In the City of Dothan?

A. She was, sir.

Q. And was she brought in to the jail when you were present?

A. Yes, sir.

Q. I see, and did the defendant talk to her at that time or not?

A. I don't recall whether he did or not, sir.

Q. All right——

Mr. Farmer: Now, then if there was no conversation, we move to exclude the testimony, or the witness's answer, about the other—about the witness being arrested and carried to jail.

[fol. 34] The Court: Overrule.

Mr. Davis: Now, at this time, I wish to again offer the two stubs identified as Government's Exhibits numbers 1 and 2 in evidence.

Mr. Farmer: And defendant objects, if your honor please.

The Court: I will admit them; objection is overruled.

Mr. Davis: Give me one minute; you may have the witness, Mr. Farmer.

Mr. Farmer: No questions.

The Court: Next witness.

Mr. Davis: Now, we will ask Mr.—I mean we will ask Charlie Griffin to come back in.

Charlie Griffin, witness for the United States, having been duly sworn, recalled, testified further as follows:

Direct examination.

By Mr. Varner:

Q. You were here on the stand a few minutes ago?

A. Yes, sir.

[fol. 35] Q. Stated your name was Charlie Griffin?

A. Yes, sir.

Q. You are a bellboy at the Houston Hotel?

A. Yes, sir.

Q. And I believe you stated that you knew Mrs. Byrd and identified her for the jury?

A. Yes, sir.

Q. Now, you stated that you took a tray of food to room 318 of the Houston Hotel to Mrs. Byrd on the evening of December 13, and you stated that there was a conversation between you and Mrs. Byrd?

A. Yes, sir.

Q. Now, will you state what that conversation was?

Mr. Farmer: Defendant objects, your honor.

The Court: I am going to sustain it.

Mr. Varner: Is your position that we have to qualify it, or that it is not a part of res gestae?

The Court: I don't think any conversation outside the presence of the defendant with this man ought to be admitted in this case.

Mr. Varner: You understand that we are relying on [fol. 36] it as part of the res gestae to prove that part of the crime——

The Court: I am sustaining objection.

Mr. Varner: Yes, sir.

Mr. Davis: Your honor, may I ask, is your honor familiar with the fact we have already proved that before coming over here to this hotel that statements of this same nature had been made in the other hotel?

The Court: Well, you can't——

Mr. Davis: They were made in the presence of the defendant before she got over here; we will show that the time was after, if we haven't already showed it. I didn't know whether your honor was familiar with that or not.

The Court: I am familiar with what, Mr. Davis?

Mr. Davis: Familiar with the fact statements had been made, we have proved statements by her and by the defendant in the Hotel Martin——

The Court: That's right.

[fol. 37] Mr. Davis:—before——

The Court: That's right.

Mr. Davis: Before she came to the Hotel Houston, the same day, same night.

The Court: You are prosecuting this man for knowingly transporting this female in interstate commerce for illegal purposes, debauchery, prostitution.

Mr. Davis: Yes, sir.

The Court: That requires a combination of transporta-

tion and purpose; what Kathleen Byrd may have done or may have said after she got here outside of his presence I am not going to admit in a prosecution against him.

Mr. Davis: All right. You may come down.

The Court: You want to ask him any questions?

Mr. Farmer: No questions.

The Court: Who is your next witness?

[fol. 38] Mr. Davis: Herbert Deal.

Mr. Varner: Would the court give us just a few minutes?

Mr. Davis: We expected to proceed in a different manner.

The Court: All right.

Mr. Davis: We will ask Mary Kathleen Byrd to take the stand.

Mary Kathleen Byrd (Mary K. Wyatt), witness for the United States, having been duly sworn, testified as follows:

Direct examination

By Mr. Varner:

Q. What is your name, please, ma'm?

A. Mary K. Wyatt.

Q. Mary K. Wyatt?

A. That's right.

Q. Are you the lady who was formerly known as Mary Kathleen Byrd?

A. I certainly am.

Q. Are you related to the defendant, Mr. Wyatt?

A. That is my husband.

Q. Were you formerly married to a Rudolph Lynn Byrd?

[fol. 39] A. Yes, I was.

Q. Was he——

Mr. Farmer: Your honor please, may I—I don't want to be out of order, but I just want to remind your honor under—I withdraw—just——

The Court: Get along.

Q. But you are now married to this defendant?

Witness: Your honor, may I say something?

The Court: Yes, ma'm.

Witness I have here in my possession my marriage license that I would like to present to the court, and I refuse to testify in this case against my husband.

The Court: All right. Is that your ground for refusing?

Witness: That is my ground for refusing.

The Court: Your objection is overruled.

Mr. Davis: Let me see it.

[fol. 40] The Court: Just a minute; I am not interested in seeing it, it doesn't make any difference in a White Slave Traffic Act case, I checked the law on it at lunch. The United States Courts in the case, most recently, Shores against United States, said that that is no ground for a wife refusing to testify, that the old common law privilege that gave a wife the right to refuse to testify did not exist in a White Slave Traffic Act case, where the wife is the alleged victim. She will testify.

Mr. Varner: Your honor, I think it would be a little safer on that, we would like to offer to try to prove she is not actually married to this defendant, if the court refuses——

The Court: I am not interested in whether she is married or not married to him, as far as the refusal to testify is concerned, because it doesn't make any difference.

Mr. Varner: Yes, sir.

Q. Now, Mrs. Byrd, you were here in Dothan on or about December 13, 1957, were you not?

A. Yes, sir.

Q. How did you get here?

A. I came by bus.

Q. Did Mr. Wyatt, this defendant here, come with you?

[fol. 41] A. He was on the bus.

Q. Did he have the ticket stubs when you got here?

A. I don't recall who had them.

Q. Did you come together?

A. We were on the same bus.

Q. You left Columbus, Georgia, together, did you not?

A. On the same bus; yes, sir.

Q. Who bought the tickets?

A. I bought my own ticket with my money; he purchased it, but it was with my money.

Q. With your money?

A. Yes, sir.
Q. Did he buy your ticket——
A. I gave——
Q. —and his ticket?
A. I gave him the money to purchase my ticket.
Q. Did you also give him the money for his ticket?
A. No, sir.

The Court: What was the answer to that?
Witness: No, sir.

Q. Were you interviewed by Mr. John Lill here in Dothan on December 14, 1957?
A. I was interviewed by him; I don't recall the date.
[fol. 42] Q. Well, was it about December 14?
A. Approximately; yes, sir.
Q. Did you or did you not state to him this or this in substance, that you bought the tickets for the trip at the Greyhound Bus Station in Columbus, Georgia, for you and Mr. Wyatt?
A. I don't recall.

Mr. Farmer: We object, just a minute, we object; if your honor please, so far as it now appears, the Government is trying to impeach its own witness in the case.
Mr. Varner: We are surprised and prepared to show that we are surprised at her testimony, and we would like to ask the court——
The Court: Let me see the statement.
Mr. Varner: Yes, sir. We further believe it is apparent from her testimony that she is a hostile witness.
Mr. Davis: You want to see it, Mr. Farmer?
Mr. Farmer: Is it a signed statement?
Mr. Davis: No, sir; statement made to Mr. Lill.
[fol. 43] Mr. Farmer: If it is not a signed statement, I don't care anything about it—I say, if it is not a signed statement, I don't care to.
The Court: If you gentlemen have anything to say, you all say it to the court. All right, I am overruling your objection, but I want that statement marked for identification purposes so it can become a part of the record in the case; it is not admitted for the jury's consideration, but it's admitted to support the ruling of the court.
Mr. Davis: Mr. Farmer, do you have any objection if

I have an exact duplicate of that statement placed with the court—with the Clerk of the court and marked for identification in evidence instead of using that statement, have an exact duplicate of it made and put it in with the Clerk of the court?

Mr. Farmer: As to that portion of any statement, I don't, but I don't—just the whole statement as exhibit, as evidence, I object to it.

Mr. Davis: No, sir; it is not going to the jury, it is to support the ruling of the court; you just as soon we put in an exact duplicate of it as to put——

[fol. 44] Mr. Farmer: Oh, yes.

The Court: Just a minute, gentlemen; you ail iron these little things out during the recess and stop—stop this talking back and forth. I just got through telling you if you had anything to say during this trial to say it to the court.

Mr. Davis: Yes, sir.

The Court: Let's get along

Mr. Varner: For the record, this Exhibit is marked Government's number 3 for identification.

The Court: All right. You can go ahead and examine the witness.

Q. Can you conveniently read my question so that she may answer it?

A. Beg your pardon.

The Court: Whether or not she made a statement to John Lill on or about such and such a date; remind her of the date.

Mr. Varner: All right, sir.

Q. On or about the 14th day of December, whether or not [fol. 45] you made a statement to Mr. John Lill, this or this in substance, that you bought the tickets for the trip at the Greyhound Bus Station in Columbus, Georgia?

A. I made the statement that I purchased my ticket, in saying that, I meant I paid for my ticket.

Q. Answer this question yes or no, please, ma'm—did you make the statement to Mr. John Lill of the FBI on or about December 14, 1957, when he was interviewing you, this or this in substance: That you bought the tickets for the trip at the Greyhound Bus Station at Columbus, Georgia, on December 12, 1957?

A. No.

Q. And did you make this statement, or this statement in substance: That the tickets were purchased to Dothan to throw your husband off the track if he should be looking for you?

A. Yes, sir.

Mr. Farmer: We object to that—we don't insist on it.

The Court: What was the answer to that?

Witness: Yes, sir.

The Court: You made that statement?

Witness: Yes, sir; I did.

[fol. 46] The Courts: All right.

Q. Did you state to him that you left Columbus by Greyhound bus about seven thirty, p.m., for Dothan?

A. Yes, sir.

Q. And—and did you make the statement that on arrival at Dothan that you took a cab from the bus station to the Hotel Martin where you—where you registered——

Mr. Farmer: He is leading the witness all the way down the line.

The Court: I am going to permit him—I am going to permit him to cross examine this witness, under the appropriate rule that permits cross examination of any witness when the witness is so obviously antagonistic to the counsel that finds it necessary to put her on the witness stand. I will permit you to cross examine the witness if you need that witness's testimony and it is antagonistic to you, so your objection is overruled. You can lead the witness.

Mr. Varner: Thank you.

Q. Now, did you make the statement to Mr. Lill at that time that when you got to Dothan you came to the Martin Hotel, and that you registered for both you and Mr. Wyatt as Mr. and Mrs. James Wyatt?

[fol. 47] A. That is correct.

Q. I beg——

A. That is correct.

Q. And did you actually so register?

A. I certainly did.

Q. And did you state to him that both of you went to Room 110 at the Hotel Martin, and that you stayed only a

few minutes and then went to the Houston Hotel in Dothan, where you registered as Mary K. Byrd, Laguna Beach——

A. I did.

Q. And did you do so?

A. I did.

Q. Now, did you—while you were at the Martin Hotel—see a bellboy there named Leroy Mills?

A. I don't know if I did or not.

Mr. Varner: Will you ask Leroy Mills to come in, please.

(Leroy Mills entered the court room)

Q. Will you look at that man?

Mr. Varner: Now, you may step back out.

(Leroy Mills left the court room)

Q. Do you recognize him?

A. If I saw him, I don't recognize him.

Q. Were you present in the Martin Hotel during a conversation between Wyatt and a bellhop?

[fol. 48] A. Only when the boy called it a disturbance when he was having an argument.

Q. Did—were you present and did you hear the defendant Wyatt state to a bellboy this or this in substance: "Boy, how is business"?

Mr. Farmer: We object, your honor.

The Court: Overrule.

A. No, I didn't.

Q. And did you state to a boy, or bellboy there in the Martin Hotel, "If you get anything, let me know"?

Mr. Farmer: We object.

A. No, I didn't.

The Court: Overrule.

Q. Did you hear this defendant Wyatt say to a bellboy there in the Martin Hotel, "Be sure to look out for us if you have any business," or that in substance?

A. No, sir; I did not.

Mr. Farmer: Objection.

The Court: Overrule. What was the answer to that?

[fol. 49] Witness: No, I didn't.

Q. Did you hear the defendant Wyatt in your hotel room state to a bellboy this or this in substance: "We will split fair with you and more than that. Boy, you know a man when you see him, if you look out for us, we will take care of you, on the first few dates we will split sixty forty, and if business gets better, we can split fifty fifty with you"?

Mr. Farmer: We object to that.
The Court: Overrule.

A. No, sir; I did not hear such a statement.

Mr. Varner: If the court will give me just a minute, please, sir, I will try to hurry.

Q. Now, on the morning of December 15, 1957, did Mr. Lill reinterview you; that was the next day after——
A. I believe he did.
Q. And did you on that occasion admit that you worked as a prostitute at the Houston Hotel on the night of December 13, 1957?

Mr. Farmer: We object, your honor please, to the question.

The Court: Well, I sustain it to that question.

[fol. 50] Q. Did you on the night of December 13, 1957, work as a prostitute at the Houston Hotel?

Mr. Farmer: We object.
Mr. Davis: If your honor please, it shows the character of the man and her character, she was traveling with him and staying with him here in Dothan. We have already proved by another witness her character, occurrences were going on when they were there together—it shows her character.
The Court: I understand all your grounds for it. I am going to lean over backwards in this case. I don't want —you are not prosecuting this man because this woman may be a prostitute.
Mr. Davis: No, sir.
The Court: You are not prosecuting this man because this woman may have prostituted at the Houston Hotel. You are prosecuting him for interstate transportation of this woman for the purpose of prostituting.

Mr. Davis: Yes, sir.

The Court: I am not going to let that Houston Hotel [fol. 51] business in unless you connect it with him.

Mr. Davis: All right.

The Court: If you connect this defendant with it, I will let it in; until you do, I am not going to do it.

Mr. Varner: May I——

The Court: Yes, sir.

Mr. Varner: —say a few more words?

The Court: All right.

Mr. Varner: We think that the fact that we have proved, or intended to prove, that they left Columbus, Georgia, together on the bus——

The Court: There is some evidence in to that effect.

Mr. Varner: They came down here and checked into the Martin Hotel——

The Court: There is some evidence—all right.

Mr. Varner: —as man and wife, she left the Martin, they [fol. 52] had a discussion in the Martin Hotel attempting to set her up as a prostitute there with the bellhop.

The Court: No question about that testimony being in; it is.

Mr. Varner: That later, we think it follows along the same transaction, or certainly that it is circumstantial evidence, that he later sent her on over to the Houston.

The Court: Now, you are——

Mr. Varner: That is our contention.

The Court: You are taking to much of a jump that he sent her to the Houston.

Mr. Varner: All right.

The Court: All right. Besides, I don't think it is too important, the success of the venture is not a material aspect of this case, gentlemen, let's get along. As to whether she was successful, or even if all the other elements existed, that doesn't make any difference.

Mr. Varner: That is all, then; thank you.

[fol. 53] The Court: You want to examine this witness, Mr. Farmer?

Mr. Farmer: No questions, if your honor please.

The Court: All right. Who is your next witness?

Mr. Davis: Ask Mr. John W. Lill to come in.

MOTION TO EXCLUDE TESTIMONY AND DENIAL THEREOF

Mr. Farmer: Just for the sake of the record, I make a motion to exclude all the testimony of the witness Mrs. Wyatt.

The Court: All right. I will overrule that motion.

JOHN W. LILL, JR., witness for the United States, having been duly sworn, testified as follows:

Direct examination.

By Mr. Davis:

Q. Mister—what is your name?

A. John W. Lill, Jr.

Q. And your occupation?

A. Special agent with the Federal Bureau of Investigation.

Q. Where are you stationed?

A. Dothan.

Q. How long have you been stationed at Dothan as a [fol. 54] special agent, Federal Bureau of Investigation?

A. Twelve and a half years.

Q. On the—you were here, then, and in that occupation last December?

A. Yes, sir.

Q. On December 14, 1957, here in Dothan, Alabama, did —in—did you interview the defendant?

A. I did.

Q. James Ivey Wyatt?

A. I did.

Q. And at that time who was present?

A. Detective Henry Hilson was present at the outset of the interview, of the Dothan Police Department, and Chief of Police Herbert Deal, Jr., was present during part of the questioning, and Special Agent Raymond Maxwell was present during part of it, too, the latter part, certain portions of the questioning.

Q. Was anybody else present?

A. I don't——

Q. That you can recall?

A. Former detective Covington was present during part of it, too, he was there at the outset, I am pretty sure he was present for a little while, I don't know that he was there during all the questioning.

Q. Where was this?

A. In the Detective Bureau of the Dothan Police Department.

[fol. 55] Q. And were there any threats or promises made to the defendant to get him to make a statement by you or by anyone in your presence or by anyone to your knowledge?

A. No, sir.

Q. Was any statement that he made made freely and voluntarily or not?

A. It was.

Q. It was made freely and voluntarily?

A. Yes, sir.

Q. Now, what did the defendant say to you on that occasion?

Mr. Farmer: Now, just a minute. Again we—I want to object to any testimony this witness may give as to what the defendant said that would be in the nature of a confession as to the charge facing him in this indictment, and for the reason that exclusive and independently of any so-called confession already in evidence here and proposed to be introduced and elicited from the witness here, that the Government has not proved the corpus delicti in this case.

The Court: Objection overruled and denied.

Q. Proceed.

A. He told me at that time that he had been living at an apartment at 804-A Riverview Apartments in Phenix City, and that he was married on November 15, 1957, to Mary Kathleen Byrd.

[fol. 56] Mr. Farmer: We object to the antecedent history, if your honor please, back three or four years before this time.

Mr. Davis: He said '57, November 15, 1957, if your honor please.

The Court: Overrule your objection; let's go.

A. He stated on December 12 he and Mary Kathleen

Byrd, whom he referred to as "Kitty" Byrd, left Columbus, Georgia, by bus and proceeded to Laguna Beach, Florida, that he had bought—had purchased the bus tickets to Dothan, and that after they arrived at Dothan that evening, they took a cab from the Greyhound Bus Station to the Hotel Martin, and Mary Kathleen Byrd Wyatt registered for both of them, and they were roomed at Room 110. He stated that they remained in that room that night and the next afternoon they had a quarrel about his drinking, and that she left to go to the home of an aunt in Dothan, and that he didn't see her again up until the time of that interview. He stated that the purpose of stopping in Dothan was that he had planned to do some drinking, and that he didn't want to go to the home of his mother-in-law, Mrs. Rogers, at Laguna Beach while he was drinking, and that he had decided to stop at the hotel in Dothan while—to wait until he was in condition to go on. And that is pretty much the summation of what he told me then. I went into some details.

[fol. 57] Q. Did he—did he—did you exhibit to him any—these bus stubs marked Government's Exhibits numbers 1 and 2?

A. I did.

Mr. Davis: May I have them please?

A. Yes, I did.

Q. What did he say about those?

A. He said that these were stubs to the tickets that he had purchased for he and his wife to Dothan.

Q. Did he tell you who this wife was?

A. Mary Kathleen Byrd—Wyatt, he said. I interviewed him again the following day, on December 15, and at that time he told me that he had resided at the apartment of Mary Kathleen Byrd, and that he—he had previously mentioned at the end of the interview on the 14th that he was not married to Mary Kathleen Byrd, he told me on the interview on the 15th that he had been living at an apartment at 1907 Avenue A in Phenix City, which was owned by Mary Kathleen Byrd, and that they left together on the afternoon of December 12, and that he purchased the bus tickets and they proceeded to Dothan, and that they stayed that night at the Hotel Martin, and that he got to drinking,

that night he had sexual relations with her, and then she left the next day. Very similar in that respect to the interview the first day as to what his statement– the only difference, one of the differences, there, was that the [fol. 58] residence——

Mr. Farmer: Now, we object to—your honor please, to him pointing out the difference in the statement.

The Court: I sustain it.

Mr. Davis: You may have the witness.

Mr. Farmer: No questions.

The Court: Next witness.

Mr. Davis: Government rests.

The Court: Case with the defendant.

MOTION FOR JUDGMENT OF ACQUITTAL AND DENIAL THEREOF

Mr. Farmer: If your honor please, the defendant moves for a judgment of acquittal in the case.

The Court: All right. Motion denied. I believe we will take a ten minute recess. You jurors, do not discuss this case, because you can't intelligently discuss it until all of the evidence is in and until I have had an opportunity to tell you what the law is that you must apply to the evidence [fol. 59] in the case. It wouldn't be fair to the Government or the defendant for you to attempt to formulate any opinion as to the guilt or the innocence of this defendant, so do not discuss it. Do not permit anyone to discuss it with you, in your presence, or in your hearing. Now, Court will be in recess ten minutes. You need not remain together.

(At which time, 3:22 p.m., a recess was had until 3:32 p.m., at which time, with the jury in the box, the trial continued.)

The Court: Defendant ready?

Mr. Farmer: That is the defendant's case, if your honor please.

The Court: You gentlemen want to argue this case?

Mr. Davis: Yes, sir.

The Court: How long you wish to argue it?

Mr. Davis: I would say ten minutes to the side should be sufficient.

Mr. Farmer: Sufficient.

The Court: Satisfied?

[fol. 60] Mr. Farmer: Yes, sir.

The Court: Go to the jury.

(At which time Mr. Varner made a closing statement to the jury on behalf of the Government)

(At which time Mr. Farmer made a closing statement to the jury on behalf of the defendant)

(At which time Mr. Davis made a closing statement to the jury on behalf of the Government)

CHARGE OF THE COURT

Gentlemen, give me your attention for a few minutes. In the trial of a Criminal case in this Court, and under our system of jurisprudence, the attorneys representing the defendant have certain functions to perform, the attorneys representing the Government have their duties and responsibilities; you jurors have separate and distinct functions and responsibilities from the functions and responsibilities of the court.

We have reached the point in the trial of this case now where it is necessary that I tell you what the law is in this particular case. And before I go any further, or lest I forget it, let me tell you that the court is not here in this case or any other case, and the jurors cannot be, if you discharge your responsibility honestly and fairly, be concerned with the policy of the law; as to whether or not it is [fol. 61] a good law or a bad law is the responsibility of the Congress of the United States, it is not the members of the judiciary—and you, as jurors, are, during your tenure as jurors, a branch of the judiciary of the United States—we are not concerned with the policy of the law.

Now, it is the court's responsibility to tell you what the law is. It is your responsibility to take that law and apply it to the facts that you determine to exist in this particular case. Now, in that connection, you are the sole finders of the facts. I don't want you to get the idea that I feel one way or the other about the guilt or the innocence of this defendant, because the way I feel about it should not, and it must not, have any bearing on the way you gentlemen feel about it. In that connection, I want to tell you that anything that I may have said or any ges-

ture that I may have indicated or given during the course of this trial, or during the course of this charge to you, that impressed you with the fact that I might feel one way or that I might feel another should not have any bearing on your decision in this particular case, because that is not my responsibility.

You gentlemen consider all the evidence, and the law says that you must consider all the evidence in the case. It doesn't impose an impossible burden on you; it does not say that you must believe all the evidence, but it says you cannot capriciously—that is, without any justification or without any reason—disregard some of the evidence in [fol. 62] the case without first considering it. The law says that you might, and it expects you to, use your common sense and exercise your common sense in determining what evidence you are going to believe and what evidence you are going to disbelieve in the event you find that the evidence is in conflict and cannot be reconciled with the truth. If you find that to be true in the case, gentlemen, then you must decide what evidence you are going to believe and what evidence you are going to disregard and abandon and not believe. In doing that, you must look to see what the attitude of the witness was as he testified from the witness stand in your presence, you must look to see whether or not the witness appeared to be telling the truth, to be disclosing all of the truth to you, as to whether or not the witness has anything to gain or lose from your verdict by reason of the testimony that he may have given or she may have given that you find to be irreconcilably in conflict with some of the other evidence or facts in the case.

Use your common sense, gentlemen. Find out what the facts are, and then take this law that I am going to tell you, and that I am telling you, is applicable in this case, apply it to those facts that you determine to exist, and then arrive at your verdict in the case.

Now, gentlemen, the case comes by an indictment. You have heard me read to you the indictment, and you have [fol. 63] heard the indictment referred to by the attorneys in their opening and possibly their closing remarks. An indictment is not evidence in a case under our system of jurisprudence, it is simply the means by which an individual

is brought into court to stand trial on the charges that the Grand Jury believes there is probably cause for him having committed. The Grand Jury makes no determination as to the guilt or the innocence of an individual, the Grand Jury made no such determination here; and, for that reason, this indictment is not evidence. You must not consider it as evidence in this particular case. I am going to permit you to have it during the course of your deliberation with you in the jury room, but for the sole purpose of for whatever use it might be in guiding you in your deliberation in this case.

This indictment charges this defendant, James Ivey Wyatt, with on or about December 12, 1957, knowingly transporting in interstate commerce from Columbus, Georgia, to Dothan, in the Middle District of Alabama, that is this District, a woman by the name of Mary Kathleen Byrd for immoral purposes, that is, for the purpose of prostitution, debauchery, and unlawful sexual intercourse. Now, that indictment is taken from and laid under a section of the law as passed by the Congress of the United States. Section of the law that that indictment is taken from, the material portions of it, material to this case, reads as follows: Whoever knowingly transports in interstate com- [fol. 64] merce any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice, or whoever knowingly procures or obtains any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce in going to any place for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent or purpose on the part of such person to induce, entice, or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice, whereby any such woman or girl shall be transported in interstate commerce, shall be, if found guilty, fined and or imprisoned as required by law or appropriately punished.

Now, there are certain elements that are set out in that

indictment, and the burden of proof in this case is on the governmental agency, the United States here, that seeks to prosecute the defendant. That burden of proof never shifts. It is not incumbent upon the defendant to come into our courts and prove himself innocent. The burden is on the Government that prosecutes a defendant in our courts to prove his guilt. Now, that burden is not an impossible one; the law doesn't say that the Government must prove a defendant guilty to a mathematical certainty, the [fol. 65] law doesn't say they must prove the defendant guilty beyond any doubt—any fanciful doubt; it says this: Simply that the burden is on the Government to prove the defendant guilty of the charges set out in the indictment here beyond a reasonable doubt, a doubt for which you may find a reason or growing out of the evidence or the lack of the evidence in the case. That is the burden that is on the Government.

The essential elements of the offense to be proven by the evidence in this case are, that this defendant did knowingly transport or cause to be transported, as I read the section to you, in interstate commerce the individual, the female by the name of Mary Kathleen Byrd, for the purpose of prostitution or debauchery, or for any other immoral purpose. Now, the transportation in interstate commerce must have been knowingly, according to the statute and according to the indictment, and it must have been with the intent and with the purpose to induce, to entice, or to compel this individual, this woman, to prostitute, to engage in debauchery, or to engage in some other immoral purpose as set out in this statute. Now, you will notice that in this instance, the law requires that there be a transportation of a female, Mary Kathleen Byrd in this instance, in interstate commerce for one or more of these purposes that are listed in this statute.

Now, interstate commerce simply means from one State [fol. 66] in the United States to another, and I charge you that if you find that there was a transportation in this instance, and that this defendant was instrumental in transporting or having this woman transported, or enticed her into being transported, from the State of Georgia to the State of Alabama, then the transportation element is present in the case.

There are certain other terms used by me, used by the attorneys, used by the indictment, used by Congress in the statute from which the indictment was taken in the case that need defining to you:

Now, the term, "Immoral purposes," is defined, and you may consider it to be legally defined by the court as being restricted to mean immorality consisting of sexual—illegal sexual intercourse.

The term, "Debauchery," as it is used here in this case by all concerned, is defined as meaning unlawful sexual indulgence motivated by lust.

The term, "Prostitution," is commercialized vice related to illegal sexual intercourse.

Now, I charge you as a matter of law, gentlemen, that the success or the failure of a venture such as is alleged to exist in this case is not particularly material. It's not particularly material, because the intent of the defendant is the controlling factor, provided the other essential elements exist in the case, so as to whether the venture, if all [fol. 67] of the other element in the case are present, was a successful one or whether it was a failure is not controlling in the particular case, under this statute.

This defendant, gentlemen, comes into this court presumed to be innocent. That presumption follows him throughout the trial; he has the benefit of it during the course of the trial, he has the benefit of it on with you in the jury room while you are deliberating this case; he has the benefit of that presumption of innocence until you reach the point in your deliberation, if you do reach such a point, that you believe that the Government has sustained its burden of proving this defendant guilty as charged beyond a reasonable doubt. Once you reach that point, the presumption of innocence serves no further purpose in the case.

Gentlemen, the statute uses, and I have used, and the indictment uses, the term, "Knowingly." It also uses the term, "with intent." Now, intent is the design, or the resolve, or the determination with which a person acts; it is a mental attitude made known only by looking at that individual's actions. I charge you as a matter of law, if proof showed—if the proof in this case shows that an unlawful act was committed, as charged in this indictment,

then the law presumed the intent. Of course, that presumption is, by legal evidence, rebuttable. Now, the term, "Knowingly," implies and requires proof greater than the [fol. 68] proof required for a general intent that I have just defined for you. To knowingly do an act which the law forbids is to do with an evil motive, or with a bad and an illegal intent and purpose. To knowingly violate a law implies not only knowledge of the thing, that it is a violation, but a determination with a bad and or an evil intent; this determination, of course, must be a conscious one, and it must be an intentional one.

I charge you, gentlemen, that it may be you will find this case has some circumstantial evidence in it. Any fact, in our courts, that may be proven by direct evidence may be proven by circumstantial evidence. Circumstantial evidence is not any thing except evidence which tends to prove a disputed fact by proof of other facts which lead a reasonable mind to the conclusion that the disputed facts exist.

I have admitted certain testimony in this case, gentlemen, relating to statements made by the accused in the case. Any statement that I have admitted in evidence and any statement that evidence relates to, made by the accused in the case, that were purportedly made after his arrest are admissible evidence; they are admissible in evidence, and you must consider them, but I caution you—because the law says I must—to look at any statement that is alleged to have been made by the defendant in the light of the other circumstances in the case; do not single them out and consider them by themselves.

The verdict in this case must be a verdict of all the jury, it [fol. 69] must be a unanimous verdict, it cannot be a verdict of just eleven of you. If, after, as I told you awhile ago, you consider the—all the evidence in the case, you believe the Government has sustained its burden of proving this defendant guilty as to the charge in the indictment beyond a reasonable doubt, then the form of your verdict must be, "We the jury find the defendant James Ivey Wyatt guilty as charged in the indictment." On the other hand, if you do not agree, if all of you do not agree, or if you do not believe that the Government has sustained its burden of proving his guilt beyond a reasonable doubt, then the

form of your verdict must be "We the jury find the defendand James Ivey Wyatt not guilty." In either event gentlemen, one of your number, whom you have selected, will sign your verdict as foreman. Now, I am going to furnish to you a form of verdict which you may use; it is in legal form, it is furnished for your convenience; you are not required to use it, however, unless you desire.

Now, before I finally submit this case to you, in order to be fair to the Government, and in order to be fair to the defendant in the case, I want to give them an opportunity to except or object to any thing that I have said in this charge, or anything that I have failed to say. If you have any, I will let the jury go outside the court room and give you that opportunity. All right, let the jury go outside the court room.

Mr. Varner: I don't believe that is necessary.

[fol. 70] The Court: You don't have any on behalf of the Government.

Mr. Farmer: The defendant has no objection, if your honor please; the defendant is satisfied with the charge.

CHARGE OF THE COURT (Cont'd.)

Then the case is submitted to you, gentlemen. You might retire and consider your verdict, and the Marshal will provide a place for you. If you will let me know when you reach a verdict, I will be here to receive it.

Marshal: Just follow me, gentlemen.

(At which time, 4:08 p.m., the jury retired from this court room)

(At 4:52 p.m., the following occurred)

REQUEST FOR AND ADDITIONAL INSTRUCTIONS

The Court: I understand the jury has requested I give them some additional instructions. Is the defendant in the court room?

Mr. Farmer: Yes, sir.

The Court: All right.

(Jury returned to the court room at 4:52 p.m.)

The Court: All right, gentlemen, you need not sit unless [fol. 71] you think it will take long enough for you to.

I understand you gentlemen have a question or some questions to ask the court; which of you has been selected as foreman, as spokesman?

Juror Trammell: There is some question about would it make any difference or—if the woman had anything to do with the instigation or planning of coming to Dothan?

The Court: If you think that the other elements, the essential elements that I have given you and defined to you, are present in the case as far as this defendant is concerned, then it would make no difference. You have any other questions?

Juror Trammell: You have another question?

Second Juror: Just the same one, if they felt that, it wouldn't.

Juror Trammell: Is that clear? Has the question been answered to your satisfaction?

The Court: All right, gentlemen. You all stand out in the hall way before you resume your deliberations, however. Mr. Marshal if you will hold them in the hall there.

(Jury retired from the court room)

[fol. 72] The Court: All right, state your exceptions and your objections to what the court said, if anything.

Mr. Farmer: No.

The Court: All right.

Mr. Varner: I would like to know what he said, I didn't get it.

The Court: If they found the woman planned or helped him to plan to come to Dothan, would it make any difference. I told him if the other essential elements were present insofar as he was concerned, then it would make no difference.

Mr. Farmer: That was my understanding.

The Court: Take them back to the jury room. All right, gentlemen, court will be in recess until further ordered.

(At which time, 4:55 p.m., court stood in recess)

(At 5:52 p. m., with the jury having returned to the court room, the following occurred)

The Court: Defendant in the court room?

Mr. Farmer: Yes, sir.

[fol. 73] The Court: All right, gentlemen, have you reached a verdict in this case?

Juror Trammell: We have, sir.

The Court: Hand it to the Clerk, please.

Juror Trammell: We the jury find the defendant James——

The Court: That is all right, just hand it to the Clerk and let me examine it; I want to make sure it's legal. All right, gentlemen, I will accept that verdict; you go ahead and read it.

The Clerk: We the jury find the defendant James Ivey Wyatt guilty as charged in the indictment, and we unanimously recommend leniency. This the 26th day of May, 1958. Bruce Trammell, foreman.

The Court: Now, gentlemen, in accepting this verdict, let me tell you this, that the court does not know whether this man has any previous record or not. That is a matter that I do not go into until the guilt has been determined. It's a matter that has no bearing on the issues in this case. [fol. 74] And I tell you this, that I will not necessarily follow your recommendation of leniency; for example, if the man has several previous convictions of a felony nature, for example, one of which may be a White Slave Traffic Act, then I will not follow your recommendation of leniency, but I will accept it and act upon it if the facts as reflected to me by my probation officers indicate that leniency should be in the case. I appreciate the way that you have served in this case, and the fact that you have served. Now, there are one or two of you gentlemen that have requested to be excused. We have completed the criminal phase of this docket, and we have a good many more civil cases that we are going to have to try, and if you jurors that have requested it and I have indicated I will excuse you will come by, then we will see if I can do something about that now. You gentlemen may be excused until nine o'clock in the morning.

(Jury left the court room)

The Court: Mr. Farmer.

Mr. Farmer: Yes, sir.

The Court: Come around. Is Mr. Davis here, or some representative from the District Attorney's office?

(Mr. Farmer and Mr. Varner conferred with the court at the bench)

[fols. 75-76] The Court: Mr. Wyatt, you will stand in the custody of the Marshal pending your filing with the Clerk of the Court a bond, appearance bond, in the amount of one thousand dollars to guarantee your appearance here in court Wednesday morning at nine o'clock, so that you might be sentenced on the jury verdict of guilty.

Defendant: You mean I got to stay in jail until Wednesday morning?

The Court: Or make a bond.

Defendant: I have my bondsman with me.

The Court: If you have a bondsman that will be approved by the court, you present him to the Clerk, and we will investigate your bondsman, and I'll pass on it. I'll be here, I'll wait for a reasonable time so it can be presented to me.

REPORTER'S CERTIFICATE (Omitted in Printing)

[fols. 76a-78] Clerk's Note: See Stipulation of parties re omission of exhibits, page 63

[fol. 79] IN THE UNITED STATES DISTRICT COURT

VERDICT OF THE JURY—May 26, 1958

We, the Jury, find the defendant James Ivey Wyatt guilty as charged in the indictment, and we unanimously recommend leniency.

This the 26th day of May, 1958.

/s/ Bruce Trammell, Foreman.

IN THE UNITED STATES DISTRICT COURT

JUDGMENT AND COMMITMENT—May 26, 1958

On the 26th day of May, 1958, came the attorney for the government and the defendant appeared in person and by and with his attorney of record,

It Is Adjudged that the defendant has been convicted by a jury upon his plea of not guilty of the offense of violation of Section 2421, Title 18, U.S.C. (white Slave Traffic Act) as charged in the Indictment No. 1823-S, and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and so sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted, and continued for sentence.

On this the 28th day of May, 1958,

[fol. 80] It Is Adjudged that the defendant is hereby commit-ed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Three (3) Years, stand commit-ed this date.

It Is Adjudged that——

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

The Court recommends commitment to: ——.

/s/ Frank M. Johnson, Jr., United States District Judge. (By) ——, ——, Deputy Clerk.

Signed —— ——, Clerk.

IN THE UNITED STATES DISTRICT COURT

TRANSCRIPT OF SENTENCE

The Court: James Ivey Wyatt. Mr. Wyatt, do you, or do you, Mr. Farmer, have any statement you would like to make to the court prior to the time I impose sentence on the jury verdict of guilty in this case?

Hubert Farmer: None, if your honor please.

The Court: Mr. Wyatt, do you, or do you, Mr. Farmer, know of any reason why you should not be sentenced at [fol. 81] this time on this jury verdict of guilty?

Hubert Farmer: No, sir; I do not.

The Court: Prior to the time I impose sentence, Mr. Wyatt, let me ask you if you were convicted in January, 1946, for larceny and fined a hundred dollars and given a six months suspended sentence?

Defendant: Yes, sir; I was.

The Court: And in April, 1949, were you convicted—were you convicted of grand larceny and sentenced to three years in the penitentiary?

Defendant: Yes, sir.

The Court: How much of that time did you serve?

Defendant: I done eighteen months and made parole.

The Court: And in May of 1953, were you convicted of grand larceny and sentenced to six years in the penitentiary?

Defendant: Yes, sir.

[fol. 82] The Court: How much of that time did you serve?

Defendant: I lacked seventeen days building four years.

The Court: Where did you serve that time?

Defendant: I served some of it at Draper, some at Kilby, and some at Atmore; I was released from Atmore, went to Federal.

The Court: You were released at Atmore?

Defendant: To the U. S. Marshal.

The Court: And where did you serve your sentence with the Federal authorities?

Defendant: Maxwell Field.

The Court: Was that on a conviction for violating the White Slave Traffic Act?

Defendant: It was.

The Court: That is the same thing you were convicted for this time?

[fol. 83] Defendant: That's right.

The Court: Did that involve the transportation of women from Georgia to the Carolinas or Virginia?

Defendant: It was my car; I carried three men and four women from Columbus, Georgia, to New Ellentown, South Carolina.

The Court: Any of them the same woman involved in this case?

Defendant: No, it was not.

The Court: Upon the jury verdict of guilty in this case, it is the order and judgment of this court that you be commit-ed to the custody of the Attorney General for a period of three years, to stand committed this date. You can stand in the hands of the Marshal. Your appeal bond in this case—I understand you are interested in appeal bond —is set at five thousand dollars.

Hubert Farmer: Yes, sir. Yes, sir.

I hereby certify that the foregoing is a full, true and correct transcript of notes taken by me in above matter the 28th day of May, 1958.

/s/ Glynn Henderson, Official Court Reporter.

[fols. 84-87] Appeal Bond (Omitted in Printing)

[fol. 88] In the United States District Court

Notice of Appeal—Filed June 3, 1958

Name and address of appellant: James Ivey Wyatt, 806 F. Riverview Apartments, Phenix City, Alabama.

Name and address of appellant's attorney: J. Hubert Farmer, Turner Building, Dothan, Alabama.

[fols. 89-90] Offense: Violation of White Slave Law.

Concise statement of judgment or order, giving date, and any sentence: Defendant given three year sentence on May 28, 1958.

Name of institution where now confined, if not on bail: —— ——.

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the Fifth Circuit from the above-stated judgment.

Dated May 28, 1958.

/s/ J. Hubert Farmer, Appellant's Attorney.

APPLICATION FOR AND EXTENSION OF TIME TO FILE RECORD (Omitted in Printing)

[fols. 91-94] APPEAL COST BOND (Omitted in Printing)

[fol. 95] DESIGNATION OF RECORD (Omitted in Printing)

[fol. 96] CLERK'S CERTIFICATE (Omitted in Printing)

[fol. 97] IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

ARGUMENT AND SUBMISSION—December 1, 1958 (Omitted in Printing)

[fol. 98] IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 17295

JAMES IVEY WYATT, Appellant,

versus

UNITED STATES OF AMERICA, Appellee.

Appeal from the United States District Court for the Middle District of Alabama

OPINION—January 14, 1959.

Before Rives, Tuttle, and Brown, Circuit Judges.

Rives, Circuit Judge: This appeal is from a judgment of conviction for white slavery, 18 U.S.C.A. §2421. The questions presented are thus stated in appellant's brief:

"1. May a conviction be had against a defendant on the charge commonly know as 'white slavery' on his extra judicial confession uncorroborated by proof

[fol. 99] aliunde of the corpus delicti as to the transportation element of the offense charged?

"2. May the wife of a defendant be compelled by the District Judge to testify against her husband?"

The indictment charged, in substance, that on or about December 12, 1957, the defendant did knowingly transport in interstate commerce from Columbus, Georgia, to Dothan, Alabama, a woman, Mary Kathleen Byrd, for the purpose of prostitution.

Leroy Mills testified that in December 1957, he was a bell boy at the Hotel Martin in Dothan, Alabama; that on December 13 he made several calls to Room 110, then occupied by the woman and defendant; that on one of those calls, the defendant asked him, "Boy, how is business?" "And I said, 'What kind of business?' And then he said that, 'We are working, and if you get anything, to let us know.' Q. All right, and did—did the woman say anything in his presence at that time or not? A. Yes, she says—Q. Speak out loud? A. She says, 'You haven't had any business?' I said, 'Yes'm, I had two this morning, but I have turned them down.'" On his next visit to the room, the woman asked, "You haven't had any business yet," and he answered "No," whereupon the defendant said: "We are going out for a while, and if you have any business to be sure to hold it for us; we will be back after a little while"; that later he went back to carry coca-colas, whereupon the following conversation ensued:

"A. Well, now, let's see, he said on this time, he asked me how was the night boy at—was he all [fol. 100] right. I said, 'No, this boy is young, and just don't fool with him, the old boy will be back tonight.' He said, "Well, you know a man when you see him,' he said, 'We will split fair with you and better than that, we will split—'

"Q. I didn't catch that last.

"A. 'We will split fair with you,' divide the money equal or fair, you know, that was what he meant; I understood what he meant.

"Q. Did he tell you how it was divided with you?

"A. Forty sixty.

"Q. Is that sixty to you or forty to you?
"A. It is forty to me and sixty to him.
"Q. I see. Allright. And—
"A. And then he says, 'If business increases, we will do better, we will split fifty fifty.' "

He further testified that the man and woman became noisy and he went to the room to ask them to be quiet, that in the defendant's presence, "She said, 'How about the business, there ain't no business'; I said, 'No, it is just slow today.' "

Henry W. Hilson testified that he was a detective for the City of Dothan, Alabama; that he arrested the defendant on December 13, 1957, and found on his person two Southeastern Greyhound Lines bus stubs showing that they were issued December 12, 1957, for transportation from Columbus, Georgia, to Dothan, Alabama; that he made no threats or promises to the defendant, but the defendant made a voluntary statement to him. The defendant objected to that statement on the ground that [fol. 101] the corpus delicti had not been proved. The court overruled the objection, and Hilson testified:

"A. He stated to me, sir, that he had purchased these tickets in Columbus, Georgia, and was going to Laguna Beach to see Mrs. Byrd's mother, and he was just stopped over in Dothan.
"Q. Did he tell you who rode from Columbus, Georgia, to Dothan, Alabama, on those tickets that he said he had purchased in Columbus, Georgia?
"A. He said he and Mrs. Byrd accompanied him to Dothan."

Mary Kathleen Byrd testified that she was formerly known as Mary Kathleen Byrd, that she is now Mary K. Wyatt, that the defendant is her husband. The following then occurred:

"Mr. Farmer: Your honor please may I—I don't want to be out of order, but I just want to remind your honor under—I withdraw—just—
"The Court: Get along.
"Q. But you are now married to this defendant?
"Witness: Your honor, may I say something?

"The Court: Yes, ma'm.

"Witness: I have here in my possession my marriage license that I would like to present to the court, and I refuse to testify in this case against my husband.

"The Court: All right. Is that your ground for refusing?

"Witness: That is my ground for refusing.

"The Court: Your objection is overruled.

"Mr. Davis: Let me see it.

[fol. 102] "The Court: Just a minute; I am not interested in seeing it, it doesn't make any difference in a White Slave Traffic Act case, I checked the law on it at lunch. The United States Courts in the case, most recently, Shores against United States, said that that is no ground for a wife refusing to testify, that the old common law privilege that gave a wife the right to refuse to testify did not exist in a White Slave Traffic Act case, where the wife is the alleged victim. She will testify.

"Mr. Varner: Your honor, I think it would be a little safer on that, we would like to offer to try to prove she is not actually married to this defendant, if the court refuses——

"The Court: I am not interested in whether she is married or not married to him, as far as the refusal to testify is concerned, because it doesn't make any difference."

The witness then testified that she was in Dothan on December 13, 1957; that she and the defendant came on the same bus from Columbus, Georgia; that the defendant bought her ticket, but that she gave him the money to purchase her ticket; that they came to the Martin Hotel and that she registered for herself and the defendant as Mr. and Mrs. James Wyatt; that both of them went to Room 110 at the Martin Hotel; that she stayed only a few minutes and then went to the Houston Hotel in Dothan, where she registered as Mary K. Byrd. She testified that she could not recognize Leroy Mills and that she was not present in the Martin Hotel during any conversation between the defendant and a bellhop, "only when the boy called it a disturbance when we was having an argument."

[fol. 103] John W. Lill, Jr., testified that he is a Special

Agent of the F.B.I. stationed at Dothan, that on December 14, 1957, the defendant made a free and voluntary statement to him. The defendant again objected on the ground that ". . . the Government has not proved the corpus delicti in this case." The court overruled the objection, and Mr. Lill testified:

"A. He told me at that time that he had been living at an apartment at 804-A Riverview Apartments in Phenix City, and that he was married on November 15, 1957, to Mary Kathleen Byrd.

". . . .

"A. He stated on December 12 he and Mary Kathleen Byrd, whom he referred to as 'Kitty' Byrd, left Columbus, Georgia, by bus and proceeded to Laguna Beach, Florida, that he had bought—had purchased the bus tickets to Dothan, and that after they arrived at Dothan that evening, they took a cab from the Greyhound Bus Station to the Hotel Martin, and Mary Kathleen Byrd Wyatt registered for both of them, and they were roomed at Room 110. He stated that they remained in that room that night and the next afternoon they had a quarrel about his drinking, and that she left to go to the home of an aunt in Dothan, and that he didn't see her again up until the time of that interview. He stated that the purpose of stopping in Dothan was that he had planned to do some drinking, and that he didn't want to go to the home of his mother-in law, Mrs. Rogers, at Laguna Beach while he was drinking, and that he had decided to stop at the hotel in Dothan while—to wait until he was in condi- [fol. 104] tion to go on. And that is pretty much the summasation of what he told me then. I went into some details.

"Q. Did he—did he—did you exhibit to him any—these bus stubs marked Government's Exhibits numbers 1 and 2?

"A. I did.

"Mr. Davis: May I have them please?

"A. Yes, I did.

"Q. What did he say about those?

"A. He said that these were stubs to the tickets that he had purchased for he and his wife to Dothan.

"Q. Did he tell you who this wife was?

"A. Mary Kathleen Byrd—Wyatt, he said. I interviewed him again the following day, on December 15, and at that time he told me that he had resided at the apartment of Mary Kathleen Byrd, and that he—he had previously mentioned at the end of the interview on the 14th that he was not married to Mary Kathleen Byrd, he told me on the interview on the 15th that he had been living at an apartment at 1907 Avenue A in Phenix City, which was owned by Mary Kathleen Byrd, and that they left together on the afternoon of December 12, and that he purchased the bus tickets and they proceeded to Dothan, and that they stayed that night at the Hotel Martin, and that he got to drinking, that night he had sexual relations with her, and then she left the next day . . . ."

The defendant did not testify and no witnesses were offered in his behalf.

Admittedly, a conviction cannot be sustained on the uncorroborated admissions or statements of a defendant. It [fol. 105] is sufficient, however, if there be some evidence independent of a confession, which, when taken with the confession, will warrant the jury in finding defendant's guilt beyond a reasonable doubt.[1] There was sufficient proof of the corpus delicti to authorize the admission of the defendant's statements and admissions.

The jury could believe such parts of a witness' testimony as they found credible, and disbelieve other parts, and could draw all reasonable inferences from the evidence. In our opinion, the evidence was clearly sufficient to sustain the verdict, and no harm was caused the defendant by his counsel's failure to move for judgment of acquittal. Rule 29, Federal Rules of Criminal Procedure. In the absence of such a motion, the evidence will be re-

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[1] Masse v. United States, 5th Cir. 1954, 210 F.2d 418; Vogt v. United States, 5th Cir. 1946, 156 F.2d 308; Tabor v. United States, 4th Cir. 1945, 152 F.2d 254; United States v. Echeles, 7th Cir. 1955, 222 F.2d 144; Flowers v. United States, 10th Cir. 1983, 99 F.2d 305; Litton v. United States, 8th Cir. 1949, 177 F.2d 416; United States v. Markman, 2nd Cir. 1952, 193 F.2d 574.

viewed by this Court only to prevent a manifest miscarriage of justice,[2] and that does not appear in this case.

A more difficult question is posed by the second inquiry. "May the wife of a defendant be compelled by the District Judge to testify against her husband?" On the present record, we must assume that she was his wife. We shall assume, also, though it is not clear, that the defendant objected to her testimony, and that he, as well as the wife, claimed the marital privilege. So assuming, the recent [fol. 106] case of *Hawkins v. United States*, U.S., No. 20, October Term 1958, decided November 24, 1958, would necessitate a reversal, but for the fact that in *Hawkins* the wife was not the victim and here she is. That distinction is vital. It was the ground upon which the District Court in the present case based its ruling "that the old common law privilege that gave a wife the right to refuse to testify did not exist in a White Slave Traffic Act case, where the wife is the alleged victim."

The *privilege* not to testify against one's husband or wife and the *disqualification* by marital relationship, as Professor Wigmore observes, "travel together, associated in judicial phrasing, from almost the beginning of their recorded journey."[3] Indeed, no distinction between the two need be recognized, for as the Supreme Court ruled in *Hawkins v. United States, supra,* slip opinion p. 3:

> ". . . The Government does not here suggest that authority, reason or experience require us wholly to reject the old rule forbidding one spouse to testify against the other. It does ask that we modify the rule so that while a husband or wife will not be compelled to testify against the other, either will be free to do so voluntarily. Nothing in this Court's cases supports such a distinction between compelled and voluntary testimony, and it was emphatically rejected in *Stein v. Bowman, supra,* a leading American statement of the basic principles on which the rule rests. 13 Pet., at 223."

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[2] Rule 29, Federal Rules of Criminal Procedure; Ansley v. United States, 5th Cir. 1943, 135 F.2d 207; Demos v. United States, 5th Cir. 1953, 205 F.2d 596.

[3] 8 Wigmore, Evidence (3rd ed. 1940), § 2227, p. 221.

[fol. 107] That case reaffirmed the general common law rule [4] to the extent that husband and wife may not testify *against* each other, but, significantly, we think, it noted the [fol. 108] exception to that rule here pertinent:

> ".... The rule yielded to exceptions in certain types of cases, however. Thus, this Court in *Stein v. Bow-*

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[4] The opinion of the Court of Appeals had emphasized that only the general rule and not any exception was involved in that case: "*With certain exceptions which have no bearing here,* it was the general rule at common law that neither husband nor wife was competent to give testimony as a witness for or against the other in any case, civil or criminal ...." (Emphasis supplied.) *Hawkins v. United States,* 10th Cir. 1957, 249 F.2d 735, 736. Out of an abundance of caution, we have examined copies of the record and of such of the briefs as the Clerk of the Supreme Court found available in the *Hawkins* case. The record (p. 41) shows that the objection was general: "Mr. Summers: I object to any testimony, your Honor, because she is his wife." The briefs of Hawkins' counsel discuss only the general rule and do not mention the exception. The Government's brief in opposition to the grant of the writ concluded as follows: "Under all these circumstances, we conclude that this case does not raise the broad question as to whether a wife *who is not the injured party* is a competent witness against her husband." (Emphasis supplied.) In its brief on the merits, the Government treats the case as testing only the general rule, but does discuss the exception at some length as follows:

"The most important situation where marital concord is regarded as an insufficient ground for excluding spousal testimony is where the wrong was committed directly against the spouse. Here an exception was made from the earliest times,[24] but not upon the basis that the reason for the rule did not apply. Instead, it was said that there was a 'necessity' for receiving the spouse's testimony.[25] But the exception was limited (with some later liberalization in some jurisdictions) to cases of corporal violence directly against the spouse—a restriction which led to some incongruous results. Where a defendant was charged with

[fol. 109] *man*, 13 Pet. 209, while recognizing 'the general rule that neither a husband nor wife can be a witness for or against the other,' noted that the rule does not apply 'where the husband commits an offence against the person of his wife.' 13 Pet., at 221."

Hawkins v. United States, supra, slip opinion p. 2.

That exception has existed at least since 1631, when it was recognized in a case bearing some resemblance to a modern "white slave" case, *Lord Audley's Trial*, 3 How. St. Tr. 401, 402, 414. There, the notorious Lord Audley had employed his servants as his nefarious instruments to rape his wife, and stood by while they executed his commands.

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forging his wife's name, his privilege against her adverse testimony was upheld.[26] Another case upheld the privilege where defendant was charged with stealing his wife's property,[27] and elsewhere it was held that a husband living separately from his wife could not testify where she was charged with burning his home.[28]

"Even more startling is the case where defendant took his seven-year-old step-daughter into the woods near their home, ostensibly on some farm chore, and there ravished her. His conviction, based largely on the testimony of the child's mother, was reversed. The court said it would be too narrow an interpretation to confine the exception to cases where there was a physical wrong against the person of the spouse, but it should at least be confined to the cases where the wrong directly and vitally affected the conjugal relation, which rape of the child did not.[29] The court felt that relaxation of the rule could lead to unfounded charges as an easy way to bring about termination of the marriage relation.[30]

"[24] See *Trial of Mervin Lord Audley*, 3 How.St.Tr. 401, 414 (1631), admitting such testimony 'where the wife is the party grieved, and on whom the crime is committed.'

"[25] Bentham has his own curious explanation of the 'necessity': 'A cause between Doe at Ux admits as many fees as a cause between Doe and Roe. In a case where there is nobody to swear for Ux, if Ux were not admitted, there would be no cause, no fees. Rule:—admit her evi-

There has been doubt as to the extent of the exception. As Professor Wigmore says:

> "The notion of Necessity, indeed, might commendably have been a broader one; the necessity of doing justice to other persons in general, when the spouse's testimony was indispensable, would have been at least as great. But the common lawyers here kept their eyes

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dence.' Bentham, *Rationale of Judicial Evidence* (Bowring's Ed.) Vol. VII, p. 481.

"[26] *Ex parte Dickson*, 132 S.W. 2d 243, 245 (Mo.).

"[27] *Overton v. State*, 43 Tex. 616, 618.

"[28] *State v. McMullins*, 156 Miss. 663, 126 So. 662.

"[29] *Cargill v. State*, 25 Okl.Cr. 314, 220 Pac. 64.

"[30] This argument had been rejected three hundred years earlier in *Lord Audley's Case, supra*, 3 How.St.Tr. 401, 415, where the defendant, charged with certain acts of depravity toward his wife, unsuccessfully urged 'That his son was now become 21 years old, and he himself old and decayed; and the one would have his lands, and the other a young husband; and, therefore, by the testimony of them and their servants added to their own, they had plotted his destruction and death.' "

Incidentally, it is interesting to note that while Professor Wigmore disapproves of the general rule, he concedes that its application may sometimes be as unsportsmanlike as shooting quail on the ground.

> ". . . it exemplifies that general spirit of sportsmanship which, as elsewhere seen, so permeates the rules of procedure inherent from our Anglo-Norman ancestors. The process of litigation (many learned judges agree) is a noble kind of sport; and certain rules of fair play should never be overstepped. One of these is to give something of a start to the victim of the chase, to follow him by certain rules only, and to respect his feelings so far as may be. This complicates the sport, and adds zest for the pursuers by increasing the skill and art required by them for success. The expedient of convicting a man out of the mouth of his wife is (let us say) poor sport, and we shall not stoop to it. Such is the theory and the sentiment of sportsmanship."

8 Wigmore, Evidence (3rd ed. 1940), § 2228, p. 228.

upon the ground, and did not allow their survey to exceed the range of immediate and unavoidable vision. Anyone could see that an absolute privilege in a husband to close the mouth of the wife in testimony against him would be a vested license to injure her in secret with complete immunity; and this much the common lawyers saw, and were willing to concede. Just how far the concession went, in concrete cases, was never [fol. 110] precisely settled. It was given varying definition at different times; it certainly extended to causes involving corporal violence to the wife; and it certainly did not extend to all wrongs done to the wife."

8 Wigmore, Evidence (3rd ed. 1940), § 2239, p. 251.

Consistently with such doubt, the appellant argues:

"But admitting for the sake of argument that such an exception now prevails, there have been cases where possibly the exception would apply in Mann Act violations, as where the defendant brought about debauchery or enforced prostitution by abductions, beatings, and other aggravated assaults.

"But no such situation exists in this case. As a matter of fact, the testimony is to the effect that the woman provided her own transportation from Columbus, Georgia to Dothan, Alabama; that she had as much to say to the bell-hop about any prospective customers as the appellant; and that although she and appellant at such time might have been contemplating marriage, she was not at the time his wife; so that any possible offense at the time was not and could not have been one against the person of his wife."

A husband, bound legally and morally to protect his wife, but who instead helps her to be a prostitute, cannot be heard to argue that she is as depraved as he. That is a manifest impossibility. The fact that the transportation occurred before marriage certainly would not any the more [fol. 110a] disqualify the wife.[8] The law is now settled in

[8] United States v. Williams, D.C. Minn. 1944, 55 F. Supp. 375, 380; 8 Wigmore, Evidence, 3rd ed. 1940, § 2239, pp. 255, 256, notes 10 and 12.

favor of the exception by a long line of decisions under this same Act [6] with only two early cases to the contrary.[7]

The Supreme Court in the *Hawkins* case, *supra*, refers to none of the many pertinent cases just mentioned and evinces no intent to repudiate them.

Finding no reversible error in the record, the judgment is

Affirmed.

[fols. 111-112] IN THE UNITED STATES COURT OF APPEALS

No. 17,295

JAMES IVEY WYATT

versus

UNITED STATES OF AMERICA

JUDGMENT—January 14, 1959

This cause came on to be heard on the transcript of the record from the United States District Court for the Middle District of Alabama, and was argued by counsel;

On consideration whereof, It is now here ordered and

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[6] United States v. Rispoli, E.D.Pa. 1911, 189 Fed. 271, 273; Cohen v. United States, 9th Cir. 1914, 214 Fed. 23, 29; United States v. Bozeman, W.D.Wash. 1916, 236 Fed. 432; Pappas v. United States, 9th Cir. 1917, 241 Fed. 665, 666; Denning v. United States, 5th Cir. 1918, 247 Fed. 463, 465, 466; Cohen v. United States, 5th Cir. 1941, 120 F.2d 139, 140; United States v. Mitchell, 2nd Cir. 1943, 137 F.2d 1006, 1008, 1009; United States v. Williams, D.C.Minn. 1944, 55 F. Supp. 375, 380; Wilhoit v. Hiatt, M.D.Pa. 1945, 60 F.Supp. 664, 665; Levine v. United States, 5th Cir. 1947, 163 F.2d 992; Hayes v. United States, 10th Cir. 1948, 168 F.2d 996, 997; Shores v. United States, 8th Cir. 1949, 174 F.2d 838, 839-841; Annotation, 11 A.L.R.2d 646, 656-658; *Accord.*, Alford v. Territory of Hawaii, 9th Cir. 1953, 205 F.2d 616, 619.

[7] United States v. Gwynne, E.D.Pa. 1914, 209 Fed. 993, 995; Johnson v. United States, 8th Cir. 1915, 221 Fed. 250, 251.

adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

[fol. 113] IN THE UNITED STATES COURT OF APPEALS

PETITION FOR REHEARING—Filed February 3, 1959

Comes appellant James Ivey Wyatt and petitions this Honorable Court to grant him a rehearing in the above stated cause, and as his grounds therefor, he respectfully assigns the following:

1. The Court erred in its factual conclusion to the effect that appellant's counsel did not move for a verdict of acquittal in behalf of the defendant below at the conclusion of the trial had therein.

2. The Court erred in holding in effect that in no case where the wife is a competent witness against her husband can she decline to testify against him.

3. The Court erred in holding in effect that although appellant's wife was a competent witness against him, yet she could not lawfully refuse to testify against him.

4. In stating the rule to the effect that there is no distinction between the voluntary and involuntary testimony of the wife against the husband, the Court erred in not recognizing and stating such rule to be a shield in behalf of the husband and for the benefit of the marriage relationship, rather than as a weapon of attack against the husband and the marriage relationship.

5. In stating the rule to the effect that there is no distinction between the voluntary and involuntary testimony of the wife against the husband, the Court erred in not recognizing and stating the rule to be that although the wife is a voluntary and willing witness against the husband, her testimony is nevertheless and nonetheless inadmissible against her husband.

6. In stating the rule to the ffect that there is no distinction between the voluntary and involuntary testimony of the wife against the husband, the Court erred in failing to recognize and in overlooking the reason for the rule permitting a wife to testify against her husband where the alleged offense is committed against her or her person.

7. The Court failed to recognize, and overlooked the rule to the effect that although the wife may be a competent, voluntary witness against her husband for an alleged offense committed against her or her person, yet in the interest of family harmony and in view of the personal nature of the offense, she may forgive the husband and thereafter decline to press the charge or to testify against him.

[fol. 114] 8. The Court erred in holding that appellant's wife is not only a competent, voluntary witness, but that although the alleged offense was against her at a time when she was not his wife, and although she had forgiven him and later married him, and therefore, did not wish to testify against him, the District Court was nevertheless correct in forcing her to testify.

9. The Court erred in holding that the Government submitted proper proof of the corpus delicti in the trial of this case.

10. The Court erred in failing to recognize, and in overlooking the fact that the essence of the offense charged in this case is one of transportation, and that only a particular kind of transportation may be an offense under the law in question.

11. The Court failed to recognize, and overlooked the legal requirement to the effect that however immoral, degrading or debauching an intention or motive one may have formed, there must first be a transportation.

12. This Court has given sanction to the admission of a confession or an admission against interest when there was no positive, substantive testimony or circumstances tending to show transportation in this case.

Wherefore, petitioner respectfully prays that this Honorable Court will grant him a rehearing in this cause and will reverse, revise and hold for naught its judgment and order it entered on to-wit January 14, 1959, affirming the judgment of the District Court of the Middle District of Alabama, Southern Division, and will enter a proper order reversing said judgment.

/s/ J. Hubert Farmer, Attorney for Petitioner,
Dothan, Alabama.

Certificate of counsel to foregoing petition and to service thereof omitted in printing.

[fol. 115] IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 17295

JAMES IVEY WYATT, Appellant,

versus

UNITED STATES OF AMERICA, Appellee

Appeal from the United States District Court for the Middle District of Alabama

PER CURIAM ON PETITION FOR REHEARING—February 18, 1959

Before Rives, Tuttle, and Brown, Circuit Judges

Per Curiam: In our original opinion we had said in part:

> ". . . . In our opinion, the evidence was clearly [fol. 116] sufficient to sustain the verdict, and no harm was caused the defendant by his counsel's failure to move for judgment of acquittal. Rule 29, Federal Rules of Criminal Procedure."

That is factually incorrect. The defendant did move for a judgment of acquittal and his motion was denied. With such correction of the opinion, the petition for rehearing is Denied.

[fols. 117-119] IN THE UNITED STATES COURT OF APPEALS

[Title omitted]

ORDER DENYING REHEARING—February 18, 1959

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

[fol. 120] CLERK'S CERTIFICATE TO FOREGOING TRANSCRIPT Omitted in Printing

[fol. 121] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND PETITION FOR WRIT OF CERTIORARI—June 15, 1959

On petition for writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby granted. The case is transferred to the appellate docket as No. 1004.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

June 15, 1959.

[fol. 122] IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1959

No. 119, O. T. 1959

JAMES IVEY WYATT

vs.

UNITED STATES OF AMERICA

STIPULATION OF PARTIES RE OMISSION OF EXHIBITS—August 26, 1959

Come the parties to this appeal and hereby stipulate as follows:

1. That in lieu of the incorporation in the record in this cause of Government Exhibits No. 1 and No. 2, the same being further identified as two bus ticket stubs, introduced as Government exhibits on the trial of appellant in the United States District Court, Middle District of Alabama, Southern Division, it may be stated that the ticket stubs bore among others, the words, "Southeastern Greyhound Lines", "Identification Check", "Dothan, Alabama," "223665 and 223666" on one side of each of the stubs and the words and figures "Columbus, December 12, 1957" on the opposite side of Stub No. 2, and the words and figures "December 12" on the opposite side of Stub No. 1.

Dated this the 26th day of August, 1959.

J. Hubert Farmer, Attorney for Appellant, P. O. Box 404, Dothan, Alabama. J. Lee Rankin, Solicitor General of the United States.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

No. 119

JAMES IVEY WYATT,

Petitioner,

vs.

UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITIONER'S OPENING BRIEF

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

No. 119

JAMES IVEY WYATT,

Petitioner,

vs.

UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITIONER'S OPENING BRIEF

Opinion Below

The opinion of the Court of Appeals (R. 47-58) is reported in 263 F. 2d 304 and modified at 263 F. 2d 311.

Jurisdiction

The judgment of the Court of Appeals was entered on January 14, 1959 (R. 58-59). The judgment was modified and the petition for rehearing was denied on February 18, 1959 (R. 61). The petition for a writ of certiorari was filed on March 19, 1959, and granted on June 15, 1959, 360 U.S. 908. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

Questions Presented

1. Whether a woman transported in interstate commerce for immoral purposes by a person whom she subsequently married, and to whom she was married at time of trial, may be compelled to testify against him, in the face of her assertion of the marital privilege.

2. Whether the Petitioner's admissions of interstate transportation were sufficiently corroborated.

Statutes and Rules Involved

1. The pertinent part of 18 U.S.C. 2421 provides:

> "Whoever knowingly transports in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; . . ."

2. Rule 26, Federal Rules of Criminal Procedure provides:

> "In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by an act of Congress or by these rules. The admissibility of evidence and the competency and privileges of witnesses shall be governed, except when an act of Congress or these rules otherwise provide, by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience."

Statement

Petitioner was convicted of transporting Mary Kathleen Byrd in violation of the Mann Act, 18 U.S.C. 2421 (R. 42). The United States Court of Appeals for the Fifth Circuit affirmed the conviction (R. 58).

The Government called "Mary Kathleen Byrd" (R. 22) who stated her name was "Mary K. Wyatt". She refused to testify, asserting marital privilege, and her "objection" was "overruled" (R. 23). She offered to show the Court her marriage license, and the Court refused to look at it, saying "it does not make any difference in a White Slave . . . case," citing *Shores* v. *United States,* 174 F. 2d 838.

The Court of Appeals took the view that the marital privilege was inapplicable, because of an exception to the privilege that applies where the wife had been injured by the husband. It cited many, so-called, "white slave" cases where the privilege was held inapplicable. Petitioner claims the authorities relied on were not in point and that both the trial and appellate courts fell into the same error.

There was evidence that Petitioner and Mary Kathleen Byrd were not married until after the Mann Act offense (R. 23 and 32).

Petitioner moved to exclude the wife's testimony (R. 30).

The transportation element of the offense was proved by admissions of the defendant (R. 32) and corroborated by the witness' spouse (R. 23).

The evidence adduced at the trial showed that petitioner was arrested by a Dothan City detective, Henry W. Hilson, on December 13, 1957, for a violation of the city code (R. 16). In the ensuing search, Hilson found that petitioner had two stubs of bus tickets from Columbus, Georgia, and

that he "was going to Laguna Beach to see Mrs. Byrd's mother and he was just stopped over in Dothan" (R. 19).

A bellboy at the Martin Hotel in Dothan identified Mary Kathleen Byrd as being in the room with petitioner (R. 3, 6). During one of the bellboy's calls to the room, petitioner asked him how business was and the bellboy said "What kind of business?" Petitioner responded "We are working, and if you get anything, to let us know" (R. 7). Mrs. Byrd then said, "You haven't had any business?" and the bellboy replied, "Yes'm, I had two this morning but I have turned them down" (R. 7).

Petitioner told the bellboy during another call, "We are going out for awhile, and if you have any business to be sure to hold it for us; we will be back after a little while" (R. 8). At a later visit petitioner, in Mrs. Byrd's presence, told the bellboy that they would divide fairly and "If business increases, we will do better, we will split fifty fifty" (R. 9). Still later, Mrs. Byrd said to the bellboy in the presence of petitioner, "How about the business, there ain't no business" (R. 11).

Mrs. Byrd then testified that she came to Dothan on the bus with petitioner, but that she paid for her ticket which he purchased (R. 23-24). Thereafter, the court allowed the government to cross-examine Mrs. Byrd because she was "so obviously antagonistic" (R. 26). Mrs. Byrd testified that she gave a statement to the F.B.I. which admitted that after she rode from Columbus, Georgia, to Dothan, she registered at the Martin Hotel with petitioner as "Mr. and Mrs. James Wyatt" (R. 26). The statement further said that after a few minutes in petitioner's room she left for the Houston Hotel (also in Dothan) where she registered as "Mary K. Byrd" (R. 27). She denied any conversation with the bellboy at the Martin Hotel as to "business" (R. 27-28).

An F.B.I. Agent testified that in two separate interviews petitioner stated that he had purchased the bus tickets; that he and Mrs. Byrd had left Georgia together and had spent the night together at the Hotel Martin in Dothan; that they were going to Laguna Beach to see his mother-in-law; and that the next afternoon, after they had a quarrel about petitioner's drinking, she had left (R. 32). Petitioner first told the agent that he was married to Mary Kathleen Byrd on November 15, 1957 (R. 31), but later said that he was not married to her when the trip took place in December, 1957 (R. 32).

Summary of Argument

It must be pointed out that there are no cases either federal or state which are exactly in point. There are many cases which deal with the privilege of the wife to refuse to testify against her husband as to his acts against her during the marriage, and many cases which deal with the wife testifying against her husband as to acts against her which occurred before the marriage. But it appears that no case like the case at bar has arisen where the wife has been compelled to testify against her husband with respect to acts which occurred before the marriage. Here there is a double reason to exclude the testimony. First, because the privilege of the wife not to testify was violated; and secondly, because the right of the husband to bar the testimony of the wife as to acts which occurred before the marriage, was violated.

These two rules are well recognized at common law and are today the majority rules in both federal and state courts. The United States seeks to have this Court decide that neither of these rules should be continued under the power granted to this Court by Rule 26, Federal Rules of Criminal Procedure.

Finally, a necessary element of the crime was lacking, namely the transportation. in that there was insufficient evidence to corroborate the admission of the petitioner.

ARGUMENT

I

The Common Law Rule, Recently Reaffirmed by This Court, Allows Either Spouse to Assert the Privilege of the Exclusion of Adverse Testimony by the Other; and This Rule Is Dispositive of the Case at Bar.

A. The General Rule—Marital Privilege.

At the October 1958 Term this Court unanimously[1] reversed a judgment because of the erroneous admission of testimony by one spouse against the other. *Hawkins* v. *United States*, 358 U.S. 74. The Court relied on the established common law privilege allowing one spouse to bar the testimony of the other. Although the common law privilege has existed for several centuries its vitality in the federal courts had not always been certain,[2] but any doubts, seem to the petitioner to have been resolved in favor of retention of the rule, by the unequivocal language and holding in *Hawkins*:

> "While the rule forbidding testimony of one spouse *for* the other was supported by reasons which time and changing legal practices had undermined, we are not prepared to say the same about the rule barring testimony of one spouse *against* the other. The basic reason the law has refused to pit wife against husband . . . was a belief that such policy was necessary to foster

[1] Mr. Justice Stewart wrote a separate concurring opinion.

[2] See *Yoder* v. *United States*, 80 F. 2d 665, where the privilege was abrogated.

> family peace, not only for the benefit of husband, wife and children, but for the benefit of the public as well. *Such a belief has never been unreasonable and is not now. . . .*" (last emphasis added) (p. 77)

Petitioner comes within the rule since both he and his wife attempted to claim the privilege when the wife's testimony was offered by the Government.[3] The Government in *Hawkins* asked this Court to modify the common law rule so the privilege would belong to the witness' spouse only. This Court correctly rejected the Government's view, agreeing with most of the cases which have dealt with the privilege problem,[4] and stated the privilege is that of either spouse. On the facts in this case, the operation of the privilege would be proper even in the view of those who would limit its scope, since *both* spouses claimed the privilege; indeed, it would be in accord with the position of the Solicitor General in *Hawkins, supra.*

This Court said in *Hawkins* (at p. 77) that it would follow the common law unless reason and experience dictated otherwise. Thus, the Court showed how it would apply Rule 26 of the Federal Rules of Criminal Procedure in questions involving common law privileges. The analysis is, then: (1) What was the rule at common law? (2) Is the rule reasonable? (3) What does our experience suggest with reference to the rule in question? The touchstone for the Court, as it should be, is the rule at common law.

There has been no showing that the general rule so recently reaffirmed should now be abandoned. Therefore, there is no issue in this case unless the Government can

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[3] R. 22 and R. 30.

[4] e.g., *United States* v. *Mitchell*, 137 F. 2d 1006, 1008, where the Second Circuit said ". . . clearly the better view is that the privilege is that of either spouse who chooses to claim it." Wigmore, 8, §2241.

bring the facts of this case within the exception to the general marital privilege.

B. The Necessity Exception.

The trial court and the Court of Appeals held the testimony of the wife was properly admitted in this case because of an exception to the general rule.[5] The exception is sometimes called the "Necessity Exception"; the rationale of which is, that it would be unjust to allow the husband to wrong his wife and then seal her lips at the trial.[6] Since the witness spouse was the woman who was transported in violation of the Mann Act, the courts below *assumed* the necessity exception was applicable; but these courts failed to consider two salient facts distinguishing this case from those relied on: (1) The wife in this case *refused* to testify; and (2) The defendant and witness spouse were *not* husband and wife at the time the alleged offense occurred. Thus, there is no basis for the necessity exception in this case.

Wigmore at §2239 in v. 8 states:

> "The common law did not fail to recognize that the rule of privilege was subject to some sort of exception. That exception was commonly placed on the ground of *Necessity*, that is, a necessity to avoid that extreme injustice to the excluded spouse which would ensue upon undeviating enforcement of the rule."[7]

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[5] See such cases as *United States* v. *Rispoli*, 189 F. 271, and *United States* v. *Mitchell*, 137 F. 2d 1006.

[6] 8 Wigmore on Evidence, §2239.

[7] The material quoted from Wigmore is well laced with critical comments about the privilege and the scope of the exception; however, Wigmore is being cited only for his exposition of the rule. His writings show an extreme antagonism towards the marital

He cites Lord Mansfield in *Bentley* v. *Cooke*, 3 Doug. 422:

> "That necessity is not a general necessity, as where no other witness can be had, but a particular necessity, as where for instance the wife would otherwise be exposed without remedy to personal injury."

This Court recognized the "necessity exception" at an early date, stating the general rule does not apply "where the husband commits an offense against the person of his wife." *Stein* v. *Bowman*, 13 Pet. 209, 221. Probably no discussion of the necessity rule would be complete without some kind of passing reference to *Lord Audley's Case*, House of Lords, 1631, 3 How. State Trials, 401.

The critical thing about the necessity exception is the *reason* underlying it: Where the general rule would have the effect of allowing a wrong-doing husband to seal his victim's lips, a necessity arises for the relaxation of the general rule of privilege. Obviously, where there is no "necessity" there should be no exception to the general rule.

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privilege, and for that matter towards the privilege against self incrimination. See §2251 where in speaking of that privilege he says: "As a bequest of the 1600s, it is but a relic of controversies and convulsions which have long ceased." His influence has been strong, and this may, in part, explain the number of critical law review comments undermining the marital privilege.

II

There Is No Necessity for an Exception to the General Rule of Privilege Where the "Victim" and Defendant Married After the Offense.

The necessity exception has no meaningful application where the victim and defendant marry *after* the offense. The rationale of the privilege, i.e., marital harmony, suggests the privilege ought to be respected in a case like this. Here there is no fear that the defendant may arbitrarily seal his wife's lips, and thus leave her without legal redress. Assuming a valid marriage, she has made a free choice, and hence she is not that helpless victim for whom the exception was made.

In this case the record is equivocal about the date of the marriage. The main reason for uncertainty is the ruling of the trial judge. The wife offered to show the Court her marriage license to which the Court responded: ". . . I am not interested in seeing it, it does not make any difference in a White Slave . . . case . . ." (R. 23).

The indictment would suggest the witness and defendant were *not married* at the time of the alleged offense, since it identifies the defendant as "James Ivy Wyatt" and the woman being transported as "Mary Kathleen Byrd" (R. 1). When called as a witness at the trial she gave her name as Mary K. Wyatt (R. 22).

The testimony of a government witness would suggest no marriage until after the offense (R. 32).

Indeed the court below assumed that the witness and defendant were not married at the time of the acts in question, but were married at the time of trial (R. 57). Further this point was considered by the court in denying point 10 in the Petition for Rehearing (R. 60).

Assuming the validity of the principle, of no necessity where the marriage occurs after the offense, then these doubts should be resolved in favor of the petitioner.[8] *Lambert* v. *California*, 355 U.S. 226, 227.

The Common Law rule is that the necessity exception does not apply where the offense to the wife occurred prior to the marriage.

Almost all of the cases dealing with the necessity exception where the offense to the witness spouse occurred before the marriage hold the exception is not applicable. *United States* v. *Gwynne* (1914 D.C.), 209 F. 993; *Norvell* v. *State*, 149 Tex. Cr. R. 213, 193 S.W. 2d 200 (1946); *People* v. *Curiale*, 137 Cal. 534, 70 Pac. 468 (1902); *State* v. *McKay*, 122 Iowa 658, 98 N.W. 510 (1916); *People* v. *Schoonmaker*, 117 Mich. 190, 75 N.W. 439 (1898); *State* v. *Frey*, 76 Minn. 526, 79 N.W. 518 (1899); *Norman* v. *State*, 127 Tenn. 340, 155 S.W. 135 (1913); and *State* v. *Evans*, 138 Mo. 116, 39 S.W. 462 (1897) (all cases wherein a rape prosecution based upon testimony of the wife as to acts which occurred before the marriage, and excluded in the interest of public policy to preserve marital harmony); *Miller* v. *State*, 37 Tex. Cr. R. 575, 40 S.W. 313 (1897) (prosecution for performing an abortion); *People* v. *Johnson*, 9 Cal. App. 233, 98 Pac. 510 (1908) (assault to commit murder); *State* v. *McGinty*, 14 Wash. 2d 71, 126 P. 2d 1086 (1942) (prosecution against the husband for living with a common prostitute).[9]

Most of these cases stem from interpretation of statutes which have codified the common law; but interestingly enough none of the States has amended its statutes in light

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[8] Apparently the Court of Appeals assumed the marriage occurred after the offense (R. 57).

[9] For additional authorities in this field see Wigmore, §2239, note 10, and an annotation in 76 A.L.R. 1088.

of these decisions. This would indicate experience and reason do *not* dictate the need for a change in the common law rule.

There have been two cases in the Federal District Courts where the offense to the wife occurred before the marriage: *United States* v. *Gwynne*, 209 F. 993 (D.C. E.D. Pa.); *United States* v. *Williams*, 55 F. Supp. 375 (D.C. Minn.). These cases were Mann Act prosecutions.

In *Gwynne* the Court said,

> "It is apparent that the exception to the rule of privilege prohibiting husband or wife from testifying against each other applies only to injuries inflicted or threatened during the existence of the marriage . . . The ground of the relaxation of the rule is the necessity for the protection of the wife . . ."

Williams, under the necessity exception, allowed the wife to testify. On principle *Gwynne* is correct and *Williams* is indefensible; because once the common law privilege is accepted, then the exception can only be applicable where there is a true necessity, i.e., allowing the victim to testify in vindication of his or her rights, in spite of the privilege. There is no reason to extend the common law exception where the petitioner and the witness were *not* married when the offense occurred; and *are* married, at the time of the prosecution.

III

The Reason for the Necessity Exception Fails Where the Wife Refuses to Testify

The witness spouse refused to testify:

> "Witness: I have here in my possession my marriage license that I would like to present to the Court, and I refuse to testify in this case against my husband.
> Court: All right. Is that your ground for refusing?
> Witness: That is my ground for refusing.
> Court: Your objection is overruled." (R. 23)

The necessity exception was created to prevent the husband from sealing the wife's lips, and hence is inapplicable where the witness wife claims the privilege.

The question of the marital privilege has arisen in several appellate cases under the Mann Act, and the necessity exception has generally been applied[10] allowing the wife to testify.[11] However, none of these cases appears to involve a situation where the *wife* claimed the privilege, i.e., she *refused* to testify, and the cases typically speak of the wife's *right* to testify: ". . . and in circumstances such as here presented, we think it would be shocking to deny her the right to testify." *United States* v. *Mitchell*, 137 F. 2d 1006, 1008. The *Mitchell* case, decided in the Second Circuit provides a good example of the rationale of these cases:

> "This is the famous exception for Necessity, in the case of injuries to the spouse, stated in 1631 in Lord

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[10] The one exception: *Johnson* v. *United States*, 221 Fed. 250.

[11] *United States* v. *Rispoli*, 189 Fed. 271; *Cohen* v. *United States*, 214 Fed. 23; *United States* v. *Bozeman*, 236 Fed. 432; *Pappas* v. *United States*, 241 Fed. 665; *Denning* v. *United States*, 247 Fed. 463; *United States* v. *Mitchell*, 137 Fed. 2d 1006; *Levine* v. *United States*, 163 F. 2d 992; *Hayes* v. *United States*, 168 F. 2d 996.

> Audley's Case, Hut. 115, 2 How. St. Tr. 401, where the husband had instigated rape against his wife. The exception itself is well settled; the only question at all doubtful is whether it can be properly applied to a violation of the White Slave Traffic Act. Here the argument is made that this is not a crime against the person of the wife, but a crime against interstate commerce. But, as Wigmore, id. §2239, says generally of all cases of enticing to prostitution or white slav traffic involving the wife, 'of course morally it is a shameless offense against the wifehood'; and we agree, as do all the authorities, with a single exception, which deal with the specific question under this statute."

All of the Mann Act appellate cases would be reconcilable with the principle being urged here with the possible exception of *Shores* v. *United States,* 174 F. 2d 838, where the Court by way of express obiter dictum said the wife may be compelled to testify.[12] Therefore, none of the appellate cases prior to this one supports the holding being questioned in this proceeding. Rather, the correct application of principles of these cases requires a reversal in this case. To hold here that a spouse may be *compelled* to testify, runs counter to the common law.

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[12] *Shores* v. *United States,* 174 F. 2d 838, 841.

IV

The Evidence Introduced by the United States Did Not Corroborate the Petitioner's Admission of Transportation

The rule is now well settled by *Opper* v. *United States*, 348 U.S. 84 and *Smith* v. *United States*, 348 U.S. 147, that an admission is not admissible, unless there is other evidence to corroborate and establish the trustworthiness of the statement.

Here the admission of the petitioner was introduced to establish the element of transportation, necessary in a prosecution under 18 U.S.C. 2421. The only other evidence as to transportation was the two bus ticket stubs and the statements made by the petitioner's wife. As it has been illustrated above, the statements and testimony of the wife were objected to by both the petitioner and his wife; consequently they should not have been admitted into evidence. Therefore, the only admissible evidence of the transportation was the two bus ticket stubs.

The stipulation of the parties (R. 63) reveals that there is no indication as to who used the stubs, or any detached portion thereof, or indeed, that they were used at all. Therefore, it is difficult to fathom how these two stubs establish or tend to establish the trustworthiness of the statements made by petitioner. Standing alone, these two bus ticket stubs, do not corroborate the petitioner's admission of transportation; therefore, the testimony was inadmissible. Manifestly, this Court ought to reverse a conviction based upon evidence which lacks an essential element of the crime.

CONCLUSION

It is respectfully submitted that the common law (privilege and exception) should be reaffirmed, and that the judgment be reversed.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM 1959

No. 119

JAMES IVEY WYATT, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the court of appeals (R. 47-58) is reported at 263 F. 2d 304 and modified at 263 F. 2d 311.

JURISDICTION

The judgment of the court of appeals was entered on January 14, 1959 (R. 58-59). The opinion was modified and a petition for rehearing was denied on February 18, 1959 (R. 61). The petition for a writ of certiorari was filed on March 19, 1959, and was granted on June 15, 1959, 360 U.S. 908. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

1. Whether, in a Mann Act prosecution, a wife who is the woman transported may refuse to testify against her husband.

2. Whether petitioner's admissions that he transported the woman were sufficiently corroborated.

STATUTES INVOLVED

18 U.S.C. 2421 provides:

> Whoever knowingly transports in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; or
>
> Whoever knowingly procures or obtains any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce, or in the District of Columbia or any Territory or Possession of the United States, in going to any place for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent or purpose on the part of such person to induce, entice, or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice, whereby any such woman or girl shall be transported in interstate or foreign commerce, or in

the District of Columbia or any Territory or Possession of the United States—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

18 U.S.C. 2422 provides:

Whoever knowingly persuades, induces, entices, or coerces any woman or girl to go from one place to another in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose on the part of such person that such woman or girl shall engage in the practice of prostitution or debauchery, or any other immoral practice, whether with or without her consent, and thereby knowingly causes such woman or girl to go and to be carried or transported as a passenger upon the line or route of any common carrier or carriers in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

STATEMENT

Petitioner was convicted by a jury in the District Court for the Middle District of Alabama of transporting Mary Kathleen Byrd from Columbus, Georgia, to Dothan, Alabama, for the purpose of prostitution, in violation of the Mann Act, 18 U.S.C. 2421 (R. 1-2, 43). He was sentenced to three years' imprisonment

(R. 44).[1] The court of appeals unanimously affirmed (R. 47-59).

The government's evidence (petitioner presented no evidence) showed that petitioner was arrested by a Dothan city detective, Henry W. Hilson, on December 13, 1957, for a violation of the city code (R. 16). In the ensuing search, Hilson found that petitioner had two stubs of bus tickets from Columbus, Georgia, to Dothan, Alabama, dated December 12, 1957 (R. 17-18, 20, 63). Petitioner told Hilson that Mrs. Byrd had accompanied him to Dothan; that he had purchased the tickets in Columbus, Georgia; and that he "was going to Laguna Beach to see Mrs. Byrd's mother and he was just stopped over in Dothan" (R. 19).

A bellboy at the Martin Hotel in Dothan identified Mary Kathleen Byrd as having been in a room with petitioner on December 13, 1959 (R. 4-6). During one of the bellboy's calls to the room, petitioner asked him how business was and the bellboy said "What kind of business?" Petitioner responded "We are working, and if you get anything, to let us know" (R. 7). Mrs. Byrd then said, "You haven't had any business?", and the bellboy replied, "Yes'm, I had two this morning but I have turned them down" (*ibid.*).

Petitioner told the bellboy during another call, "We are going out for awhile, and if you have any business to be sure to hold it for us; we will be back after a little while" (R. 8). At a later visit, petitioner, in Mrs. Byrd's presence, told the bellboy that "you know a man when you see him," that they would "split fair" with him, dividing "Forty sixty," and that "If busi-

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[1] Petitioner had previous convictions of violating the Mann Act and other felonies (R. 45-46).

ness increases, we will do better, we will split fifty fifty" (R. 9). Still later, Mrs. Byrd said to the bellboy in the presence of petitioner, "How about the business, there ain't no business" (R. 10, 11).

When the government called Mary Kathleen Byrd, she stated (R. 22-23) that her name was Mary K. Wyatt, that petitioner was her husband, and that

> I have here in my possession my marriage license that I would like to present to the court, and I refuse to testify in this case against my husband.

The trial judge rejected this ground for refusing to testify, stating "that the old common law privilege that gave a wife the right to refuse to testify did not exist in a White Slave Traffic Act case, where the wife is the alleged victim" (R. 23). Government counsel then stated that he would like to try to prove that Mrs. Byrd was not married to petitioner, but the court ruled that this fact would not make any difference (*ibid.*).

Mrs. Byrd then testified that she came to Dothan on the bus with petitioner, but that she paid for her ticket which he purchased (R. 23-24). Thereafter, the court allowed the government to cross-examine Mrs. Byrd because she was "so obviously antagonistic" (R. 26). Mrs. Byrd testified that she gave a statement to the F.B.I. which admitted that, after she rode from Columbus, Georgia, to Dothan, she registered at the Martin Hotel with petitioner as "Mr. and Mrs. James Wyatt" (*ibid.*). The statement further said, and she admitted, that after a few minutes in petitioner's room she left for the Houston Hotel (also in Dothan) where-

she registered as "Mary K. Byrd" (R. 26-27).[2] She denied any conversations with the bellboy at the Martin Hotel as to "business" (R. 27-28).[3]

An F.B.I. agent testified that in two separate interviews (on December 14 and 15, 1957) petitioner stated that he had purchased the bus tickets; that he and Mrs. Byrd had left Georgia together and had spent the night together at the Hotel Martin in Dothan; that they were going to Laguna Beach to see his mother-in-law; and that the next afternoon, after they had a quarrel about petitioner's drinking, she had left (R. 30-33). Petitioner first told the agent that he was married to Mary Kathleen Byrd on November 15, 1957 (R. 31), but later said that he was not married to her when the trip took place in December, 1957 (R. 32).

SUMMARY OF ARGUMENT

I

A. In declining last Term to modify the common law rule prohibiting one spouse from testifying against the other, this Court recognized that "the rule does not apply 'where the husband commits an offence against the person of his wife.'" *Hawkins* v. *United States*, 358 U.S. 74, 75. It is settled in the lower federal courts that the interstate transportation of a wife for immoral purposes is a crime against her "person" within that exception, and that she may therefore testify against her husband in a Mann Act prosecution.

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[2] The trial judge refused to allow the government to show what Mrs. Byrd said or did at the Houston Hotel in the absence of petitioner (R. 15-16, 21-22, 28-29).

[3] At the conclusion of Mrs. Byrd's testimony, petitioner moved to exclude it "[j]ust for the sake of the record" (R. 30). The court overruled the motion *(ibid.)*.

In the only other case which has considered whether such testimony may be compelled, it was held that it may be. *Shores* v. *United States*, 174 F. 2d 838 (C.A. 8).

Petitioner does not challenge the settled rule that a transported wife may testify against her husband in a Mann Act case. He contends only that she may not be compelled to do so, and that her testimony is not admissible where she married him after the offense. His argument is that the reason for the exception is the doctrine of "necessity," *i.e.*, that otherwise a husband's crimes against his wife might go unpunished; and that there is no "necessity" for such testimony here. The Government contends, however, that the exception has a broader basis; and that allowing a transported wife to refuse to testify against her husband would thwart a basic Congressional purpose in the Mann Act "to protect women who were weak from men who were bad" (*Denning* v. *United States*, 247 Fed. 463, 465 (C.A. 5)).

B. Congress specifically provided in the Mann Act that the consent of the woman transported is immaterial. Since the testimony of such a woman frequently is essential to a successful Mann Act prosecution, the practical effort of giving the transported wife the option of deciding whether to testify against her husband frequently would be to place in her hands the decision whether he should be punished for his crime. To permit a consenting wife thus to insulate her husband from successful prosecution would be at odds with the Congressional declaration that consent is immaterial. In these circumstances, where the crime not only is against the person of the wife but profanes the very essence of the marriage relationship, we sub-

mit that any possible injury that may result to that relationship by compelling the wife to testify against her husband is outweighed by the public interest in punishing violations of the Mann Act.

In the *Hawkins* case, *supra*, this Court specifically rejected an attempt by the Government to distinguish between voluntary and compelled testimony by the wife against the husband. Thus, if the injured wife's testimony is admissible against the husband—and we believe that it clearly is in Mann Act cases—it should be immaterial whether such testimony is given voluntarily or involuntarily.

C. The same considerations that justify compelling the wife's testimony against her husband also require rejection of petitioner's contention that such testimony is inadmissible where she marries him after the offense. Since the consent of the woman is immaterial under the Mann Act, she cannot "condone" her illegal transportation by subsequently marrying the man. The public interest strongly dictates against, rather than in favor of, permitting a subsequent marriage to bar the transported woman's testimony against her husband in Mann Act cases. For "the purpose of Congress ["to protect 'weak women from bad men' "] would be thwarted if the woman's lips were sealed against a vicious and degraded man just because he may have induced the 'weak woman' to marry him, probably in contemplation of evading justice by reason of the very rule which is now sought to be invoked" (*United States* v. *Williams*, 55 F. Supp. 375, 380 (D. Minn.)).

II

Petitioner's admissions to state and federal law officers that he transported the woman in question

across state lines were sufficiently corroborated. Not only did the woman testify that she accompanied petitioner on the interstate bus journey (and, as we have argued in Point I, such testimony was properly admitted), but two bus stubs found in petitioner's coat pocket at the time of his arrest covered the precise transportation which he admitted. This evidence "supports the essential facts admitted sufficiently to justify a jury's inference of their truth" (*Opper* v. *United States*, 348 U.S. 84, 93).

ARGUMENT

I

A Wife May Be Compelled to Testify Against Her Husband in a Mann Act Prosecution in Which She Is the Woman Transported

Unlike *Hawkins* v. *United States*, 358 U.S. 74, where this Court at the last Term was asked, but declined, to modify the common law rule prohibiting one spouse from testifying against the other, this case presents no broad issues of possible modification of the privilege. It involves only the narrow question of the scope to be given the exception, which this Court recognized in *Hawkins* (p. 75), that "the rule does not apply 'where the husband commits an offense against the person of the wife.'" Specifically, the issue is whether the Court should apply the settled federal rule that a transported wife is a competent witness against her husband in a Mann Act prosecution (see *infra*, pp. 11-12) to a situation where the wife's testimony is compelled rather than given voluntarily.

Petitioner does not appear to challenge the many cases holding that the interstate transportation of

a wife for immoral purposes is an offense against her "person." He contends (Pet. 10-14) only that the exception is inapplicable where the wife's testimony is compelled, or where the defendant and the woman transported were not married at the time of the offense (which, he urges, is the case here). We shall show that neither of these attempted distinctions has merit. First, however, we shall briefly indicate the basis and scope of the rule permitting an exception to spousal privilege in cases of offenses against the person of the wife, and the theory upon which this exception is applied to Mann Act cases.

A. The ancient common law rule "that husband and wife were incompetent as witnesses for or against each other" was "accepted at an early date as controlling in this country" (*Hawkins* v. *United States*, 358 U.S. 74, 75). The rule rested on "a belief that such a policy [of refusing "to pit wife against husband or husband against wife in a trial where life or liberty is at stake"] was necessary to foster family peace, not only for the benefit of husband, wife and children, but for the benefit of the public as well" (*id.*, p. 77).

For more than three centuries, however, there has been a settled exception: "[I]n a criminal cause * * * where the wife is the party grieved, and on whom the crime is committed, she is to be admitted a witness against her husband." *Trial of Mervin Lord Audley*, 3 How. St. Tr. 401, 414 (1631).[4] The exception was recognized by this Court in 1839, as covering cases "where the husband commits an offence against the

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[4] In *Lord Audley's* case, the wife was permitted to testify against her husband in his trial for having caused his servants to rape her.

person of his wife." *Stein* v. *Bowman*, 13 Pet. 209, 221. See, also, *Lucas* v. *Brooks*, 18 Wall. 436, 452-453 (a wife may testify against her husband "in criminal cases where he is prosecuted for wrong done to her * * *"); *Hawkins* v. *United States*, *supra*, p. 75. The exception has been accorded wide recognition in this country, in various situations involving different kinds of injury to the wife (see Wigmore, *Evidence* (3rd Ed.), vol. 8, § 2239), and has been applied to compel testimony by the wife against the husband.[5]

Shortly after the passage of the Mann Act in 1910, the question arose whether the transportation of the wife for immoral purposes constitutes an offense against her "person" within the meaning of this exception. In holding that it does, and that she may therefore testify against the husband, a district court stated (*United States* v. *Rispoli*, 189 Fed. 271, 273 (E.D. Pa., 1911)):

> * * * [T]he offense in question was essentially within the spirit of the long-established rule that allows her to testify in protection or in vindication of her right to be secure in her person against threat or assault, even by her husband.

See, also, *Cohen* v. *United States*, 214 Fed. 23, 29 (C.A. 9), certiorari denied, 235 U.S. 696:

> * * * the personal injury to a wife which permits the admission of her testimony against her husband * * * is not confined to cases of personal

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[5] *Rex* v. *Lapworth*, (1931) 1 K.B. 117; *Turner* v. *State*, 60 Miss. 351; *Bramlette* v. *State*, 21 Tex. App. 611, 2 S.W. 765; *Navarro* v. *State*, 24 Tex. App. 378, 6 S.W. 542, Bishop, *New Criminal Procedure* (2d ed., 1913), vol. 2, sec. 1153.

> violence, but may include cases involving a tort against the wife, or a serious moral wrong inflicted upon her, and that in a case of the prosecution of a man for bringing his wife from one state to another with intent that she shall practice prostitution, in violation of the White Slave Act, his act in so doing is such a personal injury to her as to entitle her to testify against him. * * *

Every circuit which has passed upon the question today holds that testimony by the transported wife is admissible against her husband in a Mann Act prosecution. *United States* v. *Mitchell*, 137 F. 2d 1006 (C.A. 2); *Denning* v. *United States*, 247 Fed. 463 (C.A. 5); *Levine* v. *United States*, 163 F. 2d 992 (C.A. 5); *Shores* v. *United States*, 174 F. 2d 838 (C.A. 8); *Cohen* v. *United States*, *supra*; *Pappas* v. *United States*, 241 Fed. 665 (C.A. 9); *Hayes* v. *United States*, 168 F. 2d 996, 997 (C.A. 10); see, also, *Alford* v. *Territory of Hawaii*, 205 F. 2d 616, 619 (C.A. 9).[6] The district courts similarly have permitted such testimony. *E.g.*, *United States* v. *Bozeman*, 236 Fed. 432 (W.D. Wash.); *United States* v. *Williams*, 55 F. Supp. 375 (D. Minn.); *Wilhoit* v. *Hiatt*, 60 F. Supp. 664 (M.D. Pa.).[7] And, in the only case other than the instant one which has considered the problem (*Shores*, *supra*), it was held

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[6] The earlier contrary decision of the Eighth Circuit in *Johnson* v. *United States*, 221 Fed. 250, was expressly overruled in the *Shores* case, *supra*, p. 841.

[7] *United States* v. *Gwynne*, 209 Fed. 993 (E.D. Pa.), recognized that such testimony would be admissible if the man and woman were married at the time of the transportation, but held it inadmissible where they were married after the offense. We think that the distinction is unsound. See *infra*, pp. 17-18.

that the wife may be compelled to give such testimony. See *infra*, pp. 13-17.

The exception permitting the wife to testify against the husband where he is charged with a crime against her person originally was explained as a rule of "necessity," *i.e.*, otherwise a husband's crimes against his wife might go unpunished. See Wigmore, *Evidence* (3rd Ed.), vol. 8, § 2239. But this theory does not adequately explain many of the applications of the exception. *Ibid.* Thus, the wife's testimony may be admitted against the husband even where there is no "necessity" for it because there is other evidence to establish the offense; and it may be excluded despite the compelling "necessity" that the offense cannot be proven without it.[8] It has been suggested that, if the basis of spousal privilege is the preservation of family peace, an exception is justified where family peace has ceased to exist, or where there is no family peace worthy of the law's protection (Wigmore, *supra;* see, also, *Soule's Case*, 5 Me. 407). We believe that in Mann Act cases the exception rests upon the further ground that it is necessary to effectuate the basic Congressional design of that statute, and cannot be explained solely on the basis of "necessity."

B. The legislative history of the Mann Act shows that a "primary purpose * * * was to protect women who were weak from men who were bad" (*Denning* v. *United States*, 247 Fed. 463, 465 (C.A. 5)). See, *e.g.*, H. Rep. No. 47, 61st Cong., 2d Sess., pp. 10, 11; S. Rep. No. 886, 61st Cong., 2d Sess., p. 10; 45 Cong. Rec. 821, 1037; *Mortensen* v. *United States*, 322 U.S. 369, 377. In order to effectuate this purpose, Congress specifi-

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[8] See *Bentley* v. *Cooke*, 3 Doug. 422, 423.

cally provided in the Act that the consent of the woman transported was immaterial. 18 U.S.C. 2422. Congress thus made the determination that the white slave traffic was so nefarious and injurious to the public welfare than even its "willing" victims require protection. And, as one court pointed out in holding that a transported wife may testify against her husband in a Mann Act case, "the purpose of Congress would be thwarted if the woman's lips were sealed against a vicious and degraded man just because he may have induced the 'weak woman' to marry him * * *" (*United States* v. *Williams*, 55 F. Supp. 375, 380 (D. Minn.)).

We submit that it would similarly thwart the Congressional design if a wife is permitted to refuse to testify against her husband charged with illegally transporting her for purposes of commercial vice. The testimony of the transported woman frequently is essential to a successful Mann Act prosecution. Thus, in many cases the practical effect of permitting a wife to decide whether to testify would be to place in her hands the decision whether her husband should escape punishment for his crime. Congress, however, has decided that the statute is violated whether or not the wife consents to being transported. To permit a consenting wife to insulate her husband from punishment by declining to testify against him would be at odds with this Congressional plan. As the court stated in *United States* v. *Williams*, 55 F. Supp. 375, 378 (D. Minn.):

> * * * For a court to declare that such consent could not only prevent the transported wife from testifying, but also prevent the husband's convic-

> tion for the crime (and the court would be saying this where the transported wife was the only witness), obviously would be thwarting both the spirit and the purpose of this section. The procedural and substantive law policies must agree if the public welfare is to be protected according to the intent of Congress.

In these circumstances, where the crime not only is against the person of the wife but profanes the very essence of the marriage relationship,[9] we submit that any possible injury that may result to that relationship by compelling the wife to testify against the husband is outweighed by the public interest in punishing those depraved men who engage in such activities. Since Congress has determined that the public interest is harmed when a woman is transported in interstate commerce for immoral purposes even with her consent, she is necessarily "injured" by such transportation. Accordingly, there is the same public "necessity" for protecting her against illegal transportation whether she is a willing or unwilling victim. In either case, the public interest requires that her testimony be given and received against her husband.

This Court specifically rejected the attempt to distinguished between voluntary and compelled testimony by the wife against the husband in the *Hawkins* case, *supra*. There the Government urged the Court to "modify the rule ["forbidding one spouse to testify against the other"] so that while a husband or wife

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[9] In *United States* v. *Bitty*, 208 U.S. 393, 401, the Court stated that the "lives and example" of prostitutes "are in hostility to 'the idea of the family, as consisting in and springing from the union for life of one man and one woman in the holy estate of matrimony * * *.'"

will not be compelled to testify against the other, either will be free to do so voluntarily." The Court held, however, that "[n]othing in this Court's cases supports such a distinction between compelled and voluntary testimony, and it was emphatically rejected in *Stein* v. *Bowman, supra,* a leading American statement of the basic principles on which the rule rests" (350 U.S., p. 77); and it pointed out (*id.*, p. 75) that in *Stein* "the Court emphasized that no exception left spouses free to testify for or against each other merely because they so desired." In other words, if the injured wife's testimony is admissible against the husband (and it clearly is, see *supra,* pp. 11-12), it is immaterial whether such testimony is given voluntarily or involuntarily.

In the only prior case which deals specifically with this problem, the Court of Appeals for the Eighth Circuit upheld compulsory testimony by a transported wife in a Mann Act case against her husband. *Shores* v. *United States,* 174 F. 2d 838. The court pointed out (p. 841) that:

> * * * The public policy involved, under which it was deemed of more importance to leave the wife's testimony available in the class of offenses encompassed by the exception, than to cloak it with the privilege of the rule, necessarily had as its underlying basis the interest of society generally, and not simply that of the wife individually, so that the wife, not being within the privilege of the rule as to any excepted offenses, naturally in such a situation stood in the same position as any other victim of another's criminal act, in the matter of the state's right to compel her to testify. * * *

And it ruled (*ibid.*) that

> * * * the wife herself, like any other witness, was without privilege in the situation to say whether she did or did not wish to testify. * * *

C. The same considerations that justify compelling the wife's testimony against her husband also require rejection of petitioner's contention (Br. 10-12) that such testimony is inadmissible where she marries him after the offense was committed. Although petitioner recognizes (Br. 10) that the record is "equivocal" whether petitioner and Mrs. Byrd were married when the crime was committed,[10] he argues (Br. 11) that the court below decided the question on the assumption that they were not, and he urges this Court to do likewise. While we agree that the date of the marriage cannot be determined from this record, we submit that, even if petitioner and Mrs. Byrd were married after the offense was committed, that would not justify her refusal to testify.

The theory upon which petitioner argues that a valid marriage subsequent to the crime precludes the wife from testifying against her husband is that by marrying him the wife has condoned his misconduct toward

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[10] When Mrs. Byrd declined to testify, the district court would not let the Assistant United States Attorney examine the marriage license, on the ground that "as far as the refusal to testify is concerned * * * it doesn't make any difference" "whether she is married or not married to him" (R. 23). Similarly, the court rejected the Government's suggestion that "we would like to offer to try to prove she is not actually married to this defendant" (R. 23). In his statements to the F.B.I., petitioner first stated that he had married Mrs. Byrd approximately one month before the offense (R. 31), and then that he was not married to her at that time (R. 32).

her, and that "she is not that helpless victim for whom the exception was made" (Br. 10). He relies (Br. 11) upon state cases holding that, with respect to certain other crimes against the woman, she condones the offense by subsequently marrying the man. But, as we have pointed out (see *supra*, pp. 13-14), the consent of the woman is immaterial under the Mann Act. The woman, therefore, cannot "condone" the illegal transportation by thereafter marrying the man. Moreover, while the woman cannot be deemed initially to have consented to the injuries to her person involved in the state cases, here she apparently agreed to being transported. "Consequently, as far as the woman was concerned, there was nothing to forgive by the marriage" (*United States* v. *Williams*, 55 F. Supp. 375, 380 (D. Minn.)). Finally, the exception permitting a transported wife to testify against her husband is not based merely upon the "necessity" of providing her with redress against her husband's wrongs toward her, but on the broader public policy of effectuating the design of the Mann Act. See *supra*, pp. 13-15.

Indeed, the public interest strongly dictates against, rather than in favor of, permitting a subsequent marriage to bar the transported wife's testimony against her husband in Mann Act cases. For, as one district court pointed out in rejecting petitioner's contention, "the purpose of Congress ["to protect 'weak women from bad men' "] would be thwarted if the woman's lips were sealed against a vicious and degraded man just because he may have induced the 'weak woman' to marry him, probably in contemplation of evading justice by reason of the very rule which is now sought to be invoked" (*United States* v. *Williams*, *supra*).

Accordingly, we urge this Court, "in the light of reason and experience" (Rule 26, Federal Rules of Criminal Procedure; see *Lutwak* v. *United States*, 344 U.S. 604, 614-615), to interpret the common law as requiring the transported wife, if called, to testify against the husband in Mann Act cases—whether the marriage took place before or after the crime, and whether the wife is a willing or unwilling witness.

II

Petitioner's Admissions That He Transported the Woman Across State Lines were Amply Corroborated

Petitioner argues (Br. 15) that, apart from the testimony of the wife, there was insufficient corroboration of his admissions to the local city detective (R. 19) and to the F.B.I. (R. 30-33) that he had purchased the bus tickets for the interstate journey, and had travelled with her from Columbus, Georgia, to Dothan, Alabama. However, if we are correct in our contention that the wife's testimony against her husband was properly received, such testimony, together with the other evidence, adequately corroborated the admissions. If, on the other hand, the Court holds that admission of the testimony was reversible error, the question of corroboration would be academic.

Evidence corroborating admissions "need not be sufficient, independent of the statements, to establish the *corpus delicti*. * * * It is sufficient, if the corroboration supports the essential facts admitted sufficiently to justify a jury inference of their truth. Those facts plus the other evidence besides the admission must, of course, be sufficient to find guilt beyond a reasonable doubt." *Opper* v. *United States*, 348 U.S.

84, 93; see *Smith* v. *United States*, 348 U.S. 147, 151-159; cf. *United States* v. *Calderon*, 348 U.S. 160. The admissions of interstate transportation were corroborated by (1) the bus tickets found in petitioner's pocket when he was searched, which covered the precise transportation which he admitted; and (2) the wife's testimony that she had travelled with him on the interstate trip (R. 17-18, 20, 23-24, 26, 63). We submit that this evidence "supports the essential facts admitted sufficiently to justify a jury's inference of their truth" (*Opper, supra*).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the court of appeals should be affirmed.

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DECEMBER 1959.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

No. 119

JAMES IVEY WYATT,

Petitioner,

vs.

UNITED STATES OF AMERICA.

PETITIONER'S REPLY BRIEF

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Summary of Argument

The decision in *Hawkins* v. *United States,* 358 U.S. 74 requires a reversal in this case, because the denial of privilege pitted husband against wife. Nothing justified an exception to the general privilege rule.

The rationale of the necessity exception has been to protect the wife by giving her the right to testify against her wrong acting husband. An alternative rationale has been where one spouse commits a wrong against the other the premise (marital harmony) of the privilege is not present. Accepting either rationale leads to the conclusion that the privilege should have been allowed in this case.

I.

The Hawkins Rationale Is a Fortiori Applicable in This Case.

Every case of privilege involves a weighing of competing policies. In the field of spousal privilege a balancing must be made between the need to foster marital harmony and the need to produce all relevant evidence in court. Petitioner believes this Court in *Hawkins* v. *United States*, 358 U.S. 74 struck the balance in favor of marital harmony. This Court stated that nothing in reason or experience showed the common law rule should be overturned. After stating the basis of the privilege is the belief it fosters marital harmony the opinion went on to say: "Such a belief has never been unreasonable and is not now . . . " (p. 77).

In *Hawkins* the Government contended the wife was voluntarily testifying against her spouse. Here the wife was compelled to testify, meaning there is marital harmony which well may be preserved by the application of the privilege. The *a fortiori* implications of this argument are clear. The Solicitor General suggests we are treading over old ground when emphasizing the spouse was *compelled* to testify, and that *Hawkins* foreclosed such an argument (Br. 15-16). Petitioner is not asking this Court to create any distinction based on whether or not a spouse is compelled to testify, but rather has suggested the premise of the Necessity Exception is not present where the witness spouse refuses to testify. The Government is relying on the exception to the general rule and must give reasons for a departure which are compatible with notions of privilege. Rather than do this the Government has sought to narrow the privilege in terms of effectuating the Mann Act. Such an argument can be made in favor of limiting or abrogating

any type of privilege. Behind this argument there is only the unsupported assertion that convictions are difficult to secure without the testimony of the wife (Br. p. 14). No data is furnished to assist this Court in determining whether to modify the common law in the light of "reason and experience". The concurring opinion in *Hawkins* suggests empirical data ought to be examined to see if law enforcement is being crippled by the maintenance of the spousal privilege.[1]

The traditional scope of the Necessity Exception is logically consistent with and facilitates the policy considerations enunciated in *Hawkins*. Thus, such scope contemplates an existing failure of marital harmony, i.e., one spouse having acted wrongfully against the other; therefore, allowing adverse spousal testimony would not strike a discordant note. Here, where there is presumably a valid marital relationship, and where there have been no wrongs subverting such relationship, the traditional limits of the exception operate as a logical projection within the scheme of marital privilege.

We will now deal seriatim with the points raised in the Government's brief.

A. The Government places principal reliance upon two cases dealing with privilege in Mann Act cases: a district court case, *United States* v. *Williams*, 55 F. Supp. 375 and *Shores* v. *United States*, 174 F. 2d 838. The Government cites *Shores* as holding spousal testimony may be compelled in a Mann Act prosecution (Br. p. 7). While the court goes out of its way to state such testimony may be compelled, such was not the holding. The court said, "As a matter of fact, she did not refuse to testify, so as to require the

[1] *Hawkins, supra*, footnote No. 4 at page 82.

court to compel her to do so, but, even if she had, this would have made no difference" (p. 841).

While *Williams* does hold the privilege may not be asserted, where the marriage took place before the offense, there is authority of equal weight which is contra: *United States* v. *Gwynne*, 209 Fed. 993. The *Williams* opinion would appear to be unsound in the light of *Hawkins, supra*, since Williams, among other things, relies on the potential frustration of Mann Act prosecutions.[2] That case also misapprehends the nature of the necessity exception.

B. The Government suggests that Petitioner relies upon state cases holding that the woman has condoned the offense by subsequently marrying the man. We certainly have not based our case on any theory of condonation, but rather have attempted to show there is no basis for an exception to the rule of privilege where the marriage occurs after the offense. Condonation in the law of crimes has an extremely limited application.[3] Among the state cases cited in the Petitioner's Opening Brief was one involving attempted murder which crime certainly could not be defended on the basis of condonation.[4] Petitioner believes it is important to avoid confusing the policy questions underlying the substantive and procedural questions, i.e., Mann Act and evidentiary rules. The Government appears to have confused the questions when it contends the privilege

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[2] *Williams, supra*, page 378.

[3] *Wharton's Criminal Procedure*, p. 268, states: "It is generally no defense that after the commission of an offense the victim condones or ratifies the offense . . . It is frequently stated that a criminal prosecution is barred when the victim . . . condones [offense] . . . if the injury is purely personal to the party affected, but not when the crime is also against the public such as . . . rape . . . or public scandal . . . "

[4] *People* v. *Johnson*, 9 Cal. App. 233, 98 Pac. 510, cited at p. 11.

ought to be narrowed to facilitate Mann Act prosecutions and continues to confuse the questions when it suggests Petitioner is relying on a condonation theory. We agree the wife cannot "condone" a Mann Act violation—no more than she can condone an attempt on her life. But we are dealing here with the question of whether she may be compelled to testify against her husband where the marriage occurred after the offense.

C. It is contended Mann Act prosecutions will be hampered if this case is decided in favor of privilege. Congress has in the past, where it has seen fit, modified the common law to facilitate a legislative objection. As was alluded to in *Hawkins,* husbands and wives may testify against each other in bigamy, polygamy or unlawful cohabitation cases. The same is true in importing aliens for immoral purposes.[5]

D. The Government states "we believe" the necessity exception in Mann Act cases rests on the ground of "necessity" to effectuate legislative intent (Br. p. 13). This assertion is made after suggesting the common law exception is not adequately explained in terms of necessity to protect the wife. Of course, the exception is a distillation of many cases, but it is submitted the pervading idea from *Lord Audley's Case,* 3 How. St. Tr. 401, through *Bentley* v. *Cooke,* 3 Doug. 422, and *Wigmore*[6] and the Mann Act cases such as *United States* v. *Mitchell,* 137 F. 2d 1006 has been the necessity of protecting the wife, and not the "necessity" to secure convictions. As Lord Mansfield said in *Bentley* v. *Cooke, supra*:

> "That necessity is not a general necessity, as where no other witness can be had, but a particular necessity,

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[5] *Hawkins, supra,* see p. 78.

[6] *Wigmore,* Evidence (3rd Ed.) Vol. 8, §2239.

as where for instance the wife otherwise be exposed without remedy to personal injury."

Wigmore suggesting an alternative theory to protecting the wife says:

> " . . . it is worthwhile to observe that the common-law cases and the statutory rules, applying the exception, are also equally open to explanation as instances in which the very reason for the privilege—at least the reason most frequently advanced . . . is lacking . . . the promotion of marital peace, and the apprehension of marital dissension . . . " (§2239 at pages 251 and 252).

Even this alternative theory would support Petitioner's position, i.e., marital harmony presumably exists where the marriage occurred after the offense; therefore, there is no reason to make an exception to the general rule.

The Mann Act cases have applied the exception in terms of necessity to protect the wife, rather than on the basis of facilitating convictions:

> "After all, the situation of the injured wife deserves some consideration; and in circumstances such as are here presented, we think it would be shocking to deny her the *right* to testify" (emphasis added) *United States* v. *Mitchell, supra*, p. 1009.

E. The Government quixotically suggests the basic purpose of the Mann Act was "to protect women who were weak from the men who were bad" (Br. p. 13). Obviously, such a characterization of the Act is less than comprehensive, and should not control the resolution of the problem at bar. The Mann Act deals with a social problem, as does the privilege. Marital harmony as a positive social value ought not to be subverted to "White-slave" law enforcement.

CONCLUSION

It is respectfully submitted that the common law (privilege and exception) should be reaffirmed, and that the judgment be reversed.

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